ADLAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) November 14, 1964]

[Ipoh — Criminal Appeal No. 75 of 1964]

Criminal Procedure — Previous conviction — Introduction of evidence of — Notice — Conviction under Minor Offences Ordinance, 1955, s. 29(1) — Irregularity — Not curable under Criminal Procedure Code (Cap. 6), s. 422.

In this case the appellant appealed against his conviction and sentence of one month's imprisonment on a charge under section 29(1) of the Minor Offences Ordinance, of being found in possession of a bicycle reasonably suspected of being stolen property and being unable to account satisfactorily how he came by the same. In the course of the trial, the prosecution introduced evidence of a previous conviction by an exhibit, which was a notice to the effect that "in view of your previous conviction of offences against property, the prosecution intend to apply for enhanced sentence against you by virtue of section 29(v) of the Minor Offences Ordinance No. 3 of 1955." The magistrate took into consideration the previous conviction under section 411 of the Penal Code.

Held: the introduction of the evidence of previous conviction was not a mere irregularity which could be passed over under section 422 of the Criminal Procedure Code but a breach of a cardinal principle in the administration of justice, and the conviction should be set aside.

Case referred to:—

(1) *Re Mat Junus bin Ridu* [1959] M.L.J. 129.

MAGISTRATE'S CRIMINAL APPEAL.

Soo Wai Sun for the appellant.

Abdul Daim bin Haji Mohd. Zainuddin (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant appeals against his conviction and sentence of one month's imprisonment on a charge, under section 29(1) of the Minor Offences Ordinance 1955, of being found in possession of a bicycle reasonably suspected of being stolen property and being unable to account satisfactorily how he came by the same.

The following facts were established by the prosecution. A police constable (P.W.1) attached to the Crime Prevention Branch, Ipoh, while checking over bicycles at the Ipoh hospital for one of a certain make reported lost, found a bicycle answering the description, the number of which, stamped on the frame, was found to have been tampered with by filing in an attempt to erase it. When the appellant turned up to collect this bicycle, the police constable announced himself and, upon the appellant's failure to give a satisfactory account of how he came to have the machine, took him and the bicycle into custody. Electric-chemical treatment by the Government chemist revealed the original serial number of the bicycle and evidence thereof was properly admitted. The appellant's explanation was rejected by the learned magistrate. After convicting the appellant, the magistrate took into consideration a previous conviction in 1957 under section 411 of the Penal Code and passed the sentence above stated.

Although I am satisfied that the appellant was rightly convicted, I feel obliged to quash the conviction because, in the course of the trial, the prosecution introduced evidence of the previous conviction by Exhibit P.1, which was a notice as follows:

> *"Sungei Sinam Report No. 1472 of 1963.*
> *Possessions of suspected stolen property, section 29(1) Ordinance, No. 3 of 1955.*
>
> Take notice that in view of your previous conviction of offences against property, the prosecution intend to apply for enhanced sentence against you by virtue of section 29(v) of the Minor Offences Ordinance No. 3 of 1955."

This was not a mere irregularity which can be passed over under section 422 of the Criminal Procedure Code but a breach of a cardinal principle in the administration of justice. What the prosecution should have done was to follow the directions given by Rigby J. in *Re Mat Junus bin Ridu* (1) and I would advise all prosecuting officers to read, digest and bear in mind the judgment therein at all times.

Conviction quashed.

ABDUL RAHMAN TALIB v. SEENIVASAGAM & ANOR.

[O.C.J. (Hepworth J.) December 5, 1964]

[K.L. — Civil Suit No. 789 of 1963]

Libel and Slander — Defences — Qualified privilege — Fair comment — Justification — Defamation Ordinance, 1957, ss. 5, 8 and 9.

The plaintiff claimed damages for slander in respect of a verbal statement made by the 1st defendant, and for libel in respect of written statements made by the 1st and 2nd defendants, alleging corrupt practices by the plaintiff. The alleged slander was contained in a statement made by the 1st defendant at a meeting at the Chinese Assembly Hall, Kuala Lumpur, referring to and repeating what he had already said as a member of Parliament in the House of Representatives, and the alleged libels were contained in (a) a written statement handed over by the 2nd defendant to persons present at that meeting and (b) a written statement handed over by the 1st defendant to a press representative at that meeting. The 1st defendant in his defence pleaded qualified privilege, fair comment and justification. The second defendant pleaded justification. The first defendant put his plea of qualified privilege under five heads submitting that the words complained of constituted:—

(a) a fair and accurate report of a debate or proceeding in Parliament and are privileged at common law;

(b) a Parliamentary report published by or under the authority of the House and are privileged by virtue of section 28 of the Houses of Parliament (Privileges and Powers) Ordinance, 1952;

(c) information to the public on a matter of public interest;

(d) a communication in which he and the persons to whom the statement was made had a common interest;

(e) a publication procured to provide a foundation for an action, that is to say, that the statement was made at the plaintiff's invitation.

It was conceded by the defence that generally the defence of fair comment was only applicable if the plea of justification succeeded.

Held: (1) the first defendant's defence of qualified privilege failed:—

(i) under heads (a) and (b) because what was said went far beyond a mere report of Parliamentary proceedings;

(ii) under head (c) because no privilege attaches where, as in this case, the facts are in controversy and are not ascertained and have not been finally adjudicated upon;

(iii) under head (d) because no privilege attaches where, as in this case, the statement was published in advance of its delivery to the proper authority for investigation as to the truth or otherwise of the allegations;

(iv) under head (e) because, on the facts, the publication was not procured by the plaintiff; and

(v) in any event because the 1st defendant was actuated by malice;

(2) the defendants have succeeded in proving the receipt of favours by the plaintiff, which was one of the two charges made against the plaintiff in the statements and although the defendants have failed to prove the truth of the other charge that the plaintiff received the sums of money alleged, the words making that allegation do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges and therefore the defendant's defence of justification succeeded.

Cases referred to:—

(1) *Speight* v. *Gosnay* (1891) 60 L.J.Q.B. 232.

(2) *Thomas* v. *Bradbury Agnew Ltd.* [1906] 2 K.B. 627, 640.

(3) *Davis* v. *Shepstone* 11 App. Cas. 187, 190.

(4) *Broadway Approvals* v. *Odhams Press* [1964] 2 All E.R. 904.

(5) *Wason* v. *Walter* (1868) L.R. 4 Q.B. 73.

(6) *R.* v. *Abingdon* (1794) 1 Esp. 226.

(7) *R.* v. *Creevy* (1813) 1 M. & S. 273.

(8) *Mangena* v. *Wright* [1907] 2 K.B. 958.

(9) *Dingle* v. *Associated Newspapers* [1961] 1 All E.R. 897 at page 915.

(10) *Associated Newspapers Ltd. & Others* v. *Dingle* [1962] 2 All E.R. 737.

(11) *Allbutt* v. *General Council of Medical Education and Registration* (1889) 23 Q.B.D. 400.

(12) *Laughton* v. *Bishop of Sodor and Man* (1872) L.R. 4 P.C. 504.

(13) *Adam* v. *Ward* [1917] A.C. 309 at page 343.

(14) *Perera* v. *Peiris* [1949] A.C. 1 at page 21.

(15) *Purcell* v. *Sowler* (1876—77) 2 C.P.D. 215.

(16) *De Buse* v. *McCarthy* [1942] 1 K.B. 156.

(17) *Warr* v. *Jolly* 172 E.R. 1336.

(18) *Kine* v. *Sewell* 150 E.R. 1157.

(19) *Weatherstone* v. *Hawkins* 99 E.R. 1001.

(20) *Rogers* v. *Clifton* 127 E.R. 317.

(21) *King* v. *Waring* 170 E.R. 721.

(22) *Taylor* v. *Hawkins* (1851) 20 L.J. Q.B. 313.

CIVIL SUIT.

R. H. V. Rintoul and *G. S. Hill* for the plaintiff.

Chan Nyarn Hoi for the 1st defendant.

S. P. Seenivasagam for the 2nd defendant.

Cur. Adv. Vult.

Hepworth J.: The plaintiff who resides at 24, Kia Peng Road, Kuala Lumpur, was at all material times the Minister for Education or the Minister for Health in the Government of the Federation of Malaya.

The 1st defendant who resides at 7, Hale Street, Ipoh, Perak, is an advocate and solicitor of the High Court in Malaya and was at all material times a Member of the House of Representatives of the Federation of Malaya.

The 2nd defendant who resides at 12, Jalan Kramat, Dato Kramat, Kuala Lumpur, Selangor, was at all material times a business man and company director.

On the 11th September, 1963, at a meeting at the Chinese Assembly Hall, Kuala Lumpur, at which large numbers of the members of the public and press representatives, variously estimated to number between 500 and 700 persons, were present the 1st defendant, addressing the plaintiff and those present through a microphone and loudspeakers available for the purpose, said the following words referring to the plaintiff:—

"You (meaning the plaintiff) allege that I besmirched your character in the House. You are wrong, because you could have asked the House to punish me under Standing Orders with a maximum penalty of $1,000 or two weeks in jail. You are no Parliamentarian and no politician. I am certainly not going to apologise to you because there is nothing to apologise for and nothing to withdraw. You issued this challenge to appear here on your own volition without any instigation from me. I am here today at the invitation of Inche Rahman Talib. I have been asked by him to repeat here what I said in Parliament on 22nd day of August, 1963. What I said was based on information and evidence oral and documentary which was supplied to me and which I have no reason to doubt.

The proper course in all democratic countries would, in such circumstances, have been to adopt Parliamentary procedure and appoint a Commission of Inquiry to inquire into allegations of misconduct. This would have been the quickest way of clearing his (meaning the plaintiff's) name — if it could be cleared at all. In this connection you will recall that Prime Minister Lee Kuan Yew of Singapore has always ordered inquiries when allegations are made in Parliament.

I am not concerned whether Inche Rahman Talib is criminally liable or not. It seems to me, however, that if a Commission of Inquiry is set up then there would be sufficient evidence to discredit him and to render him unfit to continue in office as a Member of Government.

I have read in the press about a duel of words, and so on. So far as I am concerned the duel of words will take place not here but in some Court or Commission of Inquiry.

I am here at the invitation of Inche Rahman Talib made at his own instance and of his own free will and the invitation is to repeat the allegations which I said in Parliament should be inquired into. I now repeat the allegations as recorded in the official records of Parliament:

'Mr. Speaker, Sir, I rise under Standing Orders 18(1) to ask leave to move the adjournment of this House for the purpose of discussing a definite matter of urgent public importance. Mr. Speaker, Sir, at this stage I am not entitled to go into the details of why I want to move it, but it is necessary only for me to say that I seek your permission to move the adjournment of this House to discuss the matter of corrupt practices indulged in by the present Minister of Health (meaning the plaintiff) in that he received various sums of money and other favours from a company known as the Malay Natural Fertilisers Co. Ltd., Pahang, and that these allegations against the said Minister will be shown by documentary and other proofs in my possession. I submit, Sir, that this matter is definite, this matter is urgent, because in the public interest such matter must be considered by this House without any delay and appropriate action to suspend the Honourable Minister at least will be taken. I do hope that I will get that leave and I do hope that there will be no objection raised by Members.'

One of those who have furnished me with information and evidence is present here today. He has expressed a desire to furnish copies of his information to those interested, If he does so he will do it of his own volition.

I challenge Inche Rahman Talib to submit to an inquiry by a Commission of Inquiry or by any tribunal constituted under Parliamentary practice and procedure and I honestly believe that such an inquiry will show:

(a) That the Minister, Inche Rahman Talib, is guilty of misconduct to the extent that such misconduct renders him, in my opinion, unfit to be a Minister of the Government.

(b) That he has been guilty of nepotism.

(c) That by reason of such misconduct he is unfit to hold public office as he has, in my opinion, shaken public confidence in the fair and impartial administration of public affairs."

At the same meeting the 2nd defendant handed to persons present at the meeting a statement in Romanised Malay containing the words set out in Appendix "A" to the statement of claim, a translation of which in English also appears at Appendix "A" to the statement of claim.

At the conclusion of the meeting the 1st defendant handed to a Mr. Tilak, who was known to the 1st defendant as the press representative of the *Straits Echo* newspaper, a written statement, a copy of which appears at Appendix "B" to the statement of claim. This written statement contains substantially what the 1st defendant said at the meeting at the Chinese Assembly Hall stated above, with the exception of that part which was a quotation from the Official Report of the House of Representatives.

On the 12th September, 1963, the words spoken by the 1st defendant were substantially reproduced in the *Straits Times* and the *Malayan Times* newspapers having a large circulation throughout the Federation of Malaya. Similar reports of this statement were also published in numerous other newspapers having a large circulation in the Federation of Malaya.

The plaintiff complains that the 1st defendant published the words referred to above falsely and maliciously of the plaintiff. The plaintiff also complains that the 2nd defendant published the words contained in Appendix "A" falsely and maliciously of the plaintiff. The plaintiff claims that by reason thereof he has been brought into public hatred, scandal and contempt.

The plaintiff claims:—

(1) Damages for slander against the 1st defendant in respect of the words spoken by him at the meeting at the Chinese Assembly Hall on the 11th September, 1963.

(2) Damages for libel against the 1st and 2nd defendants in respect of the words set out in Appendix "A" to the statement of claim, alleging that the 1st defendant had procured the 2nd defendant to hand to persons present at the said meeting the statement containing those words.

(3) Damages for libel against the 1st defendant in respect of the words set out in the written statement in Appendix "B" to the statement of claim.

(4) Damages for libel against the 1st defendant for publishing the words contained in the newspaper reports in the *Straits Times*, the *Malayan Times* and numerous other newspapers circulating in the Federation of Malaya.

The plaintiff also prays for an injunction to restrain the 1st and 2nd defendant from publishing the said slander and libels of the plaintiff.

For the better understanding of the allegations contained in the statements complained of it is necessary to set out the facts disclosed in evidence leading up to the making of these allegations.

In 1958 the 2nd defendant applied to the Pahang Government for a licence to extract bat guano from caves at a place called Kota Gelanggi, Pulau Tawar, in the District of Jerantut, in the State of Pahang. The purpose was to sell the guano for use as a fertiliser. In 1959 the 2nd defendant obtained a letter of introduction to the Mentri Besar, Pahang, (D.W.2), and went to see him in connection with this application. In April, 1960, a licence was granted to the 2nd defendant for this purpose expiring on the 31st December, 1960. The royalty to be paid to the Pahang Government was $5 per month per employee engaged by the 2nd defendant.

The caves are situated about 2 miles from the main road and it was necessary to open up

a road to them. This the 2nd defendant did in addition to building temporary houses to accommodate his labourers. By November, 1960, the 2nd defendant estimated that he had spent approximately $50,000 on this road and the houses.

From time to time this licence was renewed, first to the 30th June, 1961, then to the 31st December, 1961, and finally to the 30th June, 1962, all in the name of the 2nd defendant.

Between March and July, 1961, 160 tons of guano were sold at $55 per ton. The 2nd defendant stated that sales in larger quantities were not possible as no satisfactory arrangement could be made on account of the short period covered by the licence, the renewals only being for short periods each time and it consequently being impossible to guarantee a continued supply to prospective purchasers.

Somewhere towards the end of 1961, the 2nd defendant gathered that the Pahang Government was proposing to change its policy to one of issuing such licences only to limited companies and might not in the future be disposed to consider the issue of such a licence to an individual. As a consequence the 2nd defendant approached one Inche Sabri bin Haji Dahlan (P.W.10) with a view to his putting up money to form a company and in October and November, 1961, Che Sabri (P.W.10) contributed $4,300 towards the establishment of a company on the understanding that he was to receive shares for such an amount in the company in due course. On the 11th December, 1961, the Sharikat Berhad Baja Asli Melayu or the Malay Natural Fertiliser Company Limited (hereinafter referred to as the old company) was registered and the first directors were the 2nd defendant and Che Sabri (P.W.10). At the end of 1961, or the beginning of 1962 the old company applied for a 15 year lease of the area at Kota Gelanggi and a licence to extract guano for that period.

In the latter part of 1961 or early 1962 the 2nd defendant, Che Sabri (P.W.10) and Che Musa bin Abdul Rahman (D.W.3) the father of the plaintiff's wife went to see the Mentri Besar, Pahang, (D.W.2) at his house in the evening about this application for a 15 year lease and the licence by the old company. The Mentri Besar (D.W.2) said the matter would be considered by the State Council.

In March, 1962, the 2nd defendant's family consisting of his wife and a son and a daughter came to live with the plaintiff in his house at Kia Peng Road, Kuala Lumpur. It would appear that the 2nd defendant stayed there only off and on until June, 1962, when the engagement of the plaintiff's youngest brother with the 2nd defendant's daughter took place, after which the 2nd defendant appears to have himself lived at the plaintiff's house more regularly. The reason for the 2nd defendant's family going to live at the plaintiff's house in March, 1962, would appear to be that the 2nd defendant was at that time in financial difficulties.

While awaiting a reply from the Pahang Government to the application for the 15 year lease and the licence the 2nd defendant contacted a Japanese gentleman by the name of Suzuki who was interested in the guano and took some samples back to Tokyo to have them analysed. After Mr. Suzuki's return from Tokyo the 2nd defendant stated that the analyst's report was satisfactory, the guano having been found to contain phosphate in some cases up to nearly 40%. The 2nd defendant then in May, 1962, went to see a Mr. R. Hughes in Kuala Lumpur who introduced him to a Mr. H. G. Warren and a Mr. D. W. A. Corkett. These gentlemen were very interested in this guano business. As a result of discussions between the 2nd defendant and Messrs. Warren, Corkett and Hughes an agreement was entered into on the 30th May, 1962, between them (page 39 of Bundle "A"), whereby the 2nd defendant agreed to allow Messrs. Warren, Corkett and Hughes the sole and exclusive right to remove bat guano from Kota Gelanggi the consideration to be an immediate payment of $3,000 together with a further payment of $50,000 on the issue of the 15 year lease. In addition Messrs. Warren, Corkett and Hughes were to pay to the 2nd defendant tribute at the rate of $8.40 for every ton of guano removed. Paragraph 5 of this agreement reads as follows:—

> "5. Within fourteen (14) days of the issue of the said lease, the licensee (2nd defendant) shall in consideration of a further sum of dollars fifty thousand only ($50,000), to be paid by the contractors (Messrs. Warren, Corkett and Hughes) to the licensee enter into a formal agreement to grant to the contractors and/or their nominees the sole and exclusive right to enter and remove bat guano from the said land for the duration of the period stated in the said lease and containing such terms and conditions as may be mutually agreed upon by the parties hereto and subject to the rate of tribute set out in clause 6 hereunder and such agreement shall be prepared by and executed before Messrs. Allen & Gledhill, Advocates and Solicitors, Oversea Chinese Bank Building, 23, Market Street (top floor), Kuala Lumpur, provided always that should the contractors and/or their nominees refuse to enter into the aforesaid agreement within the aforesaid period of 14 days then in the happening of such an event the contractors their nominees servants and agents shall forthwith vacate the said land and the sum of dollars three thousand ($3,000) paid under clause 1 above shall be forfeited to the licensee and this agreement shall be null and void and of no effect and neither party shall have any claims against the other."

The 2nd defendant had at that time a licence which was due to expire on the 30th June, 1962,

so that it was important for the old company to obtain their 15 year lease and the licence as soon as possible both to enable Messrs. Warren, Corkett and Hughes to extract guano after the 30th June, 1962, and to enable the 2nd defendant to obtain the further payment of $50,000. The sum of $3,000 was in fact paid by Mr. Warren to the 2nd defendant on the 25th May, 1962. This agreement was drawn up by Messrs. Allen & Gledhill, a firm of advocates and solicitors in Kuala Lumpur who are the firm of solicitors who prepared the memorandum and articles and dealt with the registration of the old company and are referred to in clause 5 of this agreement.

The 2nd defendant stated that at the beginning of June, 1962, he was unofficially informed that the old company's application for a 15 year lease would be granted but only for 3 years.

In June, 1962, the 2nd defendant's daughter became engaged to the plaintiff's youngest brother and the engagement ceremony took place in that month.

On the 27th June, 1962, Mr. Warren gave the 2nd defendant a cheque for $5,000 for his own use.

According to D.3 on the 24th July, 1962, Messrs. Warren, Corkett and Hughes registered a company known as the Malayan Phosphate Company Limited.

Sometime in June or July, but probably in July, 1962, the 2nd defendant and Che Sabri (P.W.10) decided to approach the plaintiff with a view to expediting the issue of the lease. They saw the plaintiff who said that he would help but appears merely to have told them at this stage to be patient. But in any event the 2nd defendant again went to see the plaintiff on the 10th August, 1962, and the plaintiff thereupon telephoned the Mentri Besar, Pahang, (D.W.2), stating that a complaint had been made about the delay in the issue of this lease and the licence. The Mentri Besar told the plaintiff that he would find out what the position was and let him know. What happened at the meeting in July and at this meeting on the 10th August, 1962, is in issue and will be referred to again later.

On the same day, the 10th August, 1962, the old company passed a resolution (page 2 of "A") to open a bank account with the Bank of America, Kuala Lumpur, and that cheques drawn on such account should be signed by both the 2nd defendant and the plaintiff's wife, Che Rahmah binti Musa (D.W.5). This resolution was forwarded to the manager of the Bank of America, Kuala Lumpur, by letter dated the 14th August, 1962, (page 1 of bundle "A") together with a copy of the memorandum and articles of association of the old company, asking for the necessary forms and specimen signature cards for opening an account. From the initials typed at the bottom of the copy letter put in evidence it would appear that this letter may have been written by Mr. H. G. Warren.

On the 17th August, 1962, Mr. H. G. Warren gave the 2nd defendant a cheque for $10,000 for his own use.

On the 21st August, 1962, the Mentri Besar, Pahang, (D.W.2) wrote to the plaintiff a letter (page 3 of bundle "A") referring to the telephone conversation on the 10th August, 1962, and informing him that on the 26th June, 1962, the State Government had accepted in principle the granting of a license for the extraction of guano in Kota Gelanggi to the old company. One or two further points required clearing up and when this had been done the licence for the extraction of the guano would be issued for a period of 3 years.

On the 12th September, 1962, cash cheque No. 82876 for $500 (D.6) was drawn on the old company's account at the Bank of America, Kuala Lumpur, by the 2nd defendant and Che Rahmah (D.W.5). This cheque was endorsed by Abdul Hamid bin Abu Bakar (P.W.12).

On the 25th September, 1962, cash cheque No. 82883 for $500 (D.7) was drawn on the old company's account at the Bank of America, Kuala Lumpur, by the 2nd defendant and Che Rahmah (D.W.5). This cheque was also endorsed by Abdul Hamid bin Abu Bakar (P.W.12).

On the 30th September, 1962, the wedding of the 2nd defendant's daughter and the plaintiff's youngest brother took place.

On the 7th October, 1962, cash cheque No. 82890 for $527 (P.18) was drawn on the old company's account at the Bank of America, Kuala Lumpur, by the 2nd defendant and Che Rahmah (D.W.5). This cheque was used to pay some of the expenses of the marriage between the 2nd defendant's daughter and the plaintiff's youngest brother.

On the 16th October, 1962, cash cheque No. 82893 for $664 (P.19) was drawn on the old company's account at the Bank of America, Kuala Lumpur, by the 2nd defendant and Che Rahmah (D.W.5). This cheque also was used to pay some of the expenses of the marriage between the 2nd defendant's daughter and the plaintiff's youngest brother.

It appears that the old company was to be given temporary occupation licences for 3 years and not a lease. In any event the 2nd defendant on behalf of the old company paid at the

Land Office, Jerantut, a T.O.L. fee of $225 in respect of 1962, on the 15th September, 1962, $6,300 deposit on the 27th September, 1962, and the licence fee to extract guano of $2,100 on the 8th October, 1962. The licence was No. 32235.

Under section 17 of the Federated Malay States Land Code (Chapter 138) which applies in the State of Pahang the Ruler-in-Council may permit temporary occupation of State land under licence. Section 20 gives the Ruler-in-Council power to delegate to the Collector of Land Revenue the power to permit the temporary occupation of State land and to impose express conditions in respect thereof and this has probably been done in the State of Pahang. The form of such temporary occupation licence is prescribed in the Land Rules and by virtue of rule 40(iii) every such licence shall expire not later than the 31st day of December of the year in respect of which it is issued.

Under section 27 of the Land Code no document of title (a *fortiori* a temporary occupation licence) shall confer any right to remove without licence beyond the boundaries of the land, *inter alia*, any guano....Rules 47 and 48 of the Land Rules provide the form of a licence to remove guano and provide that the collector may require the applicant to deposit a sum of money so that on default being made in the payment of any sum accrued due under that licence the sum so accrued due may be withdrawn by the collector from the sum so deposited and credited to revenue.

It is apparent from the above sections of the Land Code and the rules of the Land Rules that where a temporary occupation licence has been issued the holder, before he can extract guano from the land subject to that temporary occupation licence, must also obtain a licence to extract the guano. It is also clear that a temporary occupation licence cannot be issued for a period extending beyond the 31st December next following the date of the grant of the licence.

By the 15th October, 1962, the old company was therefore in a position to go ahead with the extraction of guano, the licence and T.O.L. fees having been paid and the deposit made at the Land Office. That was the date upon which the 2nd defendant alleges that a meeting took place between himself and the plaintiff at the plaintiff's house. Whether such a meeting took place, and if it did, what happened is in issue and will be referred to later.

Sometime after the 8th October, 1962, the 2nd defendant and Che Sabri (P.W.10) went to Kota Bahru to consult a lawyer named Che Ishak bin Abdul Hamid (P.W.6) about a fresh agreement in pursuance of and to take the place of the agreement of the 30th May, 1962, (page 39 of bundle "A"). This was necessary in pursuance of clause 5 of that agreement and also because the State Government had not agreed to issue a 15 year lease to the old company but only temporary occupation licences for 3 years. They went to see Che Ishak (P.W.6) at his house and not at his office. A fresh agreement (page 8 of bundle "A") was drafted by Che Ishak (P.W.6) in Kota Bharu and was handed by Che Ishak (P.W.6) to the 2nd defendant.

Sometime between the 15th October, 1962, and the 26th November, 1962, a meeting took place at the house of one Inche Osman (not P.W.5) in Kuala Lumpur at which the 2nd defendant, Che Sabri (P.W.10) and Che Ishak (P.W.6) were present. Exactly what took place at that interview is in issue. I will refer to this again later.

On the 26th November, 1962, Che Rahmah (D.W.5) sent a letter to the Bank of America informing them that she would no longer be a signatory to cheques drawn on the account of the old company.

According to D.3 on the 3rd December, 1962, the 2nd defendant and the old company through their solicitors wrote to Messrs. Warren, Corkett and Hughes, giving them notice to enter into the new agreement pursuant to clause 5 of the agreement of the 30th May, 1962.

On the 4th December, 1962, Che Sabri (P.W.10) wrote a letter to the Registrar of Companies informing him that he, Che Sabri, had resigned as a director of the old company.

According to D.3 from the 3rd December, 1962, until the 17th December, 1962, the old company through their solicitors negotiated with the Malayan Phosphate Company Limited and Messrs. Warren, Corkett and Hughes on the terms and conditions of the new agreement.

On the 12th December, 1962, one Inche Hassan bin Awang was appointed a director in the place of Che Sabri (P.W.10).

On the 12th December, 1962, Sharikat Perusahaan Malaysia Limited (hereinafter referred to as the new company) was registered, the first directors of which were Che Musa (D.W.3), Dato Mahmud bin Mat and Inche Abdul Rani bin Bidin (page 18 of bundle "A"). Che Ishak (P.W.6) was the lawyer acting for Che Musa (D.W.3) in the formation of the new company.

Sometime after the 26th November, 1962, Che Rahmah (D.W.5) told the Mentri Besar, Pahang, (D.W.2) at the plaintiff's house that the 2nd defendant had demanded money from Mr. Warren to be given to the Mentri Besar

(D.W.2) and to Pahang U.M.N.O.* because at that time U.M.N.O. was contemplating putting up a building in Kuantan. The Mentri Besar (D.W.2) did not wish to get the 2nd defendant into trouble by reporting him to the police so he decided to give the 2nd defendant some advice.

According to D.3 on the 28th December, 1962, the old company through their solicitors gave written notice to the Malayan Phosphate Company Limited stating *inter alia* that unless Malayan Phosphate Company Limited confirmed on or before the 31st December, 1962.—

(a) acceptance of the terms and conditions of the new agreement as discussed and finalised between the parties; and

(b) execution of the new agreement within the first week of January, 1963,

the old company would hold that the Malayan Phosphate Company Limited had refused to enter into the new agreement pursuant to clause 5 of the agreement of the 30th May, 1962, and would call upon the Malayan Phosphate Company Limited, their servants and agents to vacate from the said land on or before the 31st December, 1962. Further that the old company would hold that the Malayan Phosphate Company Limited, their servants and agents were trespassers in the event of their remaining on the said land after the 31st December, 1962.

According to D.3 the Malayan Phosphate Company Limited by letters dated the 31st December, 1962, and the 5th January, 1963, refused to enter into the new agreement in the terms of an already agreed draft and the old company through their solicitors on the 10th January, 1963, finally gave notice to the Malayan Phosphate Company Limited, their servants and agents to vacate from the said land forthwith.

Sometime prior to the 12th January, 1963, the acting District Officer, Jerantut, Haji Osman bin Haji Mohamed Baki (P.W.5), on carrying out an inspection at Kota Gelanggi, found evidence to suggest that guano was being removed without his knowledge. He wrote to the old company asking if this was correct and they denied it. He then instructed the Assistant District Officer to make further investigations and the Assistant District Officer made a written report (D.25) dated the 12th January, 1963, stating that between the 7th September, 1962, and the 25th November, 1962, 21 tons of guano had been removed. No evidence was given as to the accuracy or otherwise of this report (D.25). This report (D.25) was submitted to the Commissioner of Lands and Mines, Pahang.

* United Malay National Organisation.

On the 3rd January, 1963, the Mentri Besar, Pahang, (D.W.2) wrote a letter to the 2nd defendant asking him to call and meet the Mentri Besar (D.W.2) at his office at 10.30 a.m. on Wednesday, the 23rd January, 1963. A copy of this letter was sent to the plaintiff and to Che Musa (D.W.3). The Mentri Besar (D.W.2) asked Che Musa (D.W.3) to come to this meeting as well.

According to D.3 on the 22nd January, 1963, the Malayan Phosphate Company Limited, their servants and agents were still on the said land having refused to vacate therefrom and to give vacant possession to the old company.

On the 22nd January, 1963, Messrs. Allen & Gledhill on behalf of the old company issued a writ together with a statement of claim (Exhibit D.3) against the Malayan Phosphate Company Limited claiming possession of the said land.

The meeting at the Mentri Besar's office duly took place on the 23rd January, 1963, and those present were the Mentri Besar (D.W.2), the 2nd defendant, Che Musa (D.W.3) and one Inche Ismail who was from the office of the Commissioner of Lands and Mines, Pahang. The Mentri Besar (D.W.2) asked the 2nd defendant if it was true that he had demanded money from Mr. Warren and Mr. Corkett. The Mentri Besar (D.W.2) did not state what the 2nd defendant's reply was, if any, to this question, but he did say that the 2nd defendant refused to speak unless Che Musa (D.W.3) left the room. The 2nd defendant's reason for this, the Mentri Besar (D.W.2) said, was that he wished to make a complaint about Che Rahmah (D.W.5), Che Musa's (D.W.3) daughter. The Mentri Besar (D.W.2) refused the 2nd defendant's request that Che Musa (D.W.3) should leave the room and so the 2nd defendant left the meeting. The Mentri Besar (D.W.2) said he had intended also to question the 2nd defendant about the unsatisfactory running of the business by the old company.

On the 28th January, 1963, the new company applied to the Pahang Government for a licence to extract guano from 3 areas at Kota Gelanggi including the area in respect of which the old company's licence was still in existence.

The 2nd defendant stated that he wrote two or three times to the District Officer, Jerantut, asking him to accept temporary occupation licence fees for the year 1963 but they were refused. The 2nd defendant sent a cheque for the fees but it was returned.

On the 16th February, 1963, the Mentri Besar (D.W.2) wrote another letter to the 2nd defendant referring to his previous letter and the meeting on the 23rd January, 1963, and

contradicting his previous letter and stating that the bringing out of the guano was not being conducted to the satisfaction of the State Government. A copy of this letter was sent to the plaintiff and to Che Musa (D.W.3).

On the 7th April, 1963, the 2nd defendant as a director of the old company wrote a letter to the Prime Minister making allegations against the plaintiff stating that the plaintiff's object was that the licence granted to the old company should be withdrawn and that it should be given to the new company.

The issue of the *Utusan Zaman* of the 5th May, 1963, contained some paragraphs based on information obtained from the 2nd defendant stating that the Pahang Government had not permitted the old company to renew its temporary occupation licence in respect of Kota Gelanggi, Jerantut, and alleging that the land had been given to another company.

On the 27th May, 1963, the District Officer, Jerantut, informed the 2nd defendant that the old company's licence had been withdrawn.

The issue of the *Utusan Zaman* of the 1st August, 1963, contained the Pahang Government's reply to the allegations contained in the issue of the 5th May, 1963, in a letter from the State Information Officer, Pahang. This reply made no reference to the temporary occupation licence but only to the licence to extract guano. It stated that this licence had been cancelled because the old company had allowed another company to extract the guano, the numbers of the lorries transporting the guano had not been notified to the Collector of Land Revenue, and the royalty had not been paid in respect of bat guano already extracted.

On the 7th August, 1963, a licence to extract guano at Kota Gelanggi was issued to the new company. This is the date upon which the 2nd defendant wrote the statement which is annexed to the statement of claim as Appendix "A".

On the 18th August, 1963, one Inche Zulkiflee, now deceased, an opposition member of the House of Representatives, spoke to the 1st defendant, also an opposition member in the House of Representatives but of a different political party, and handed over to him a file which had been given to Inche Zulkiflee by the 2nd defendant and which amongst other documents included the 2nd defendant's statement attached to the statement of claim as Appendix "A". The 1st defendant took this file away and studied it and as a result on the 22nd August, 1963, the 1st defendant moved the adjournment of the House in the terms set out in the statement of claim referred to above.

Later the same day in the House of Representatives, the plaintiff in reply to the Speaker said:—

> "I am quite aware of that, Sir, and I am not going to make a statement now, but I think I have got to challenge the Member for Ipoh (the 1st defendant) to repeat that allegation outside this House or bring the matter to court."

The following day, the 23rd August, 1963, a note signed by the 1st defendant was circulated among the newspaper correspondents present in the House of Representatives. This note, which was admitted as Exhibit P.1, reads:—

> "Press Statement — Please pass this round.
>
> With reference to the challenge issued yesterday by the Minister for Health, I accept the challenge as already indicated by me in my speech in Parliament to-day. The time and date to be notified to me by the challenger who should be present himself. I could not refer specifically because of Standing Orders.
>
> D. R. Seenivasagam.
> 23.8.63 "

On the 5th September, 1963, the plaintiff wrote a letter to the 1st defendant as follows:—

> "Dear Sir,
>
> House of Representatives'
> Proceedings on 22.8.1963.
>
> On the 22nd of August, 1963, you are recorded as having stated in the House of Representatives:—
>
> 'I seek your permission to move the adjournment of this House to discuss the matter of corrupt practices indulged in by the present Minister of Health in that he received various sums of money and other favours from a company known as the Malay Natural Fertilisers Co. Ltd., Pahang, and that these allegations against the said Minister will be shown by documentary and other proofs in my possession. I submit, Sir, that this matter is definite, this matter is urgent, because in the public interest such matter must be considered by this House without any delay and appropriate action to suspend the Honourable Minister at least will be taken.'
>
> I place on record that the statement that I had indulged in corrupt practices in that I have received various sums of money and other favours from a company known as the Malay Natural Fertilisers Co. Ltd. is untrue and is highly defamatory.
>
> However I am also advised that in view of the fact that you made this statement in the House the statement is absolutely privileged and I cannot therefore vindicate my character before the public by commencing proceedings in the courts.
>
> The local press has reported that you have stated that if challenged by me you are prepared to repeat this statement in circumstances which would result in my having an opportunity to test the accuracy thereof in the courts.
>
> I accordingly now accept your invitation and challenge you either:—
>
> (i) To admit publicly that you have made a mistake and withdraw the allegations or
>
> (ii) If you refuse to do this to repeat the statement set out above outside the House in the presence of witnesses who may record accurately what you say.
>
> Should you accept this challenge, then I would suggest that the most convenient place might be the Chinese Assembly Hall in Kuala Lumpur and that a

suitable date and time would be on 11th instant at 3 p.m.

Please advise me by return if this date and place suit you, so that I may arrange to be present and make the necessary arrangements.

Yours faithfully,

(Sd.) Abdul Rahman bin Haji Talib."

On the 6th September, 1963, the 1st defendant replied as follows:—

"Dear Sir,

House of Representatives'
Proceedings on 22.8.1963.

Thank you for your letter of the 5th September, 1963, which came to hand late last evening. Before your letter reached me I was contacted by the press saying that you had released copies of the letter to them for publication. This is most astonishing.

I make no comment on paragraphs 1, 2 and 3 of your letter for the moment for the good reason that I would like to check the record of proceedings of the House to satisfy myself.

Your paragraph 4 which starts with the words 'The local press....and ends with the words in the courts' followed by the subsequent paragraph suggests that I invited you to challenge me on the above subject. As you are aware this suggestion is quite fantastic and is a misstatement of the facts. You of your own volition and completely disregarding the Parliamentary privilege which I have as a M.P. to speak in the House, challenge me to repeat what I said in the House outside the House. You therefore chose to ignore the remedies you have within the House to deal with any unfounded allegations that may be made by any Member of the House.

That unprovoked challenge which you issued to me on your own I am ready to accept and will be at the Chinese Assembly Hall at 3.00 p.m. on the 11th instant. If you still maintain your challenge made on your own but I hope you will be there too.

Hoping to see you.

Yours faithfully,

(Sd.) D. R. Seenivasagam."

The plaintiff then made arrangements for the use of the Chinese Assembly Hall, Kuala Lumpur, including the provision of miscrophones and loudspeakers, and obtained a police permit for holding the meeting. The stage was then set for holding the meeting at which the matters complained of occurred.

So much for the background to the meeting which took place at the Chinese Assembly Hall, Kuala Lumpur, on the 11th September, 1963.

By virtue of section 3 of the Civil Law Ordinance, 1956, the common law of England is applicable except in so far as it has been modified by the provisions of the Defamation Ordinance, 1957. Sections 5, 8 and 9 of the Defamation Ordinance, 1957, are in *pari materia* with sections 2, 5 and 6 respectively of the English Defamation Act, 1952. The law here is, therefore, for all practical purposes the same as the law of England.

A plaintiff establishes a *prima facie* cause of action as soon as he has proved the publication of defamatory words. It is no part of the plaintiff's case in an action of defamation to prove that the defamatory words are false for the law presumes this in his favour. The words complained of in this case are clearly defamatory in that they tend to lower the plaintiff in the estimation of right thinking men and expose him to hatred, contempt or ridicule. In addition they are calculated to disparage him in the way of his office as a Minister of the Government. The disparagement is therefore presumed to have injured the plaintiff's reputation. In addition in the circumstances in the case of both the slander and the libels the words are actionable *per se* and there is therefore no need for the plaintiff to prove that he has suffered any resulting damage, for such damage is presumed.

In so far as the publication is concerned no proof of publication by either of the defendants is required in this case because both of them admit the publication of the matter complained of.

To established his cause of action all the plaintiff had to prove in the first instance was:—

(i) in so far as the allegation of slander is concerned that he held office as a Minister of the Government and that the words were spoken of him in the way of that office, and

(ii) in so far as re-publication is concerned that the defendants either authorised or intended the person to whom they published the words to repeat or re-publish them to some third person or the repetition or re-publication of the words to a third person was the natural and probable result of the original publication. (*Speight* v. *Gosnay*,[1] and *Gatley* on Libel and Slander, 5th Edition, page 104).

It is not essential that the repetition should be the naural and necessary, or the natural and legal, consequence of the original publication of the words. It is sufficient if it be the natural and probable consequence of such publication. Whether the repetition is the natural and probable consequence of the original publication is a question of law, the determination of which must depend on the circumstances of each particular case. If the repetition is such as (taking human nature as it is and having regard to the relationship of the parties) might reasonably be anticipated to follow from the first speaking of the words, the original publisher is liable. (*Gatley*, page 105, paragraph 171).

The plaintiff proved that at the relevant time he held office as a Minister of the Government and that the words were spoken of him in the way of that office. He in my opinion also proved liability for re-publication as in all the

circumstances there can be no doubt that repetition or re-publication of the words to a third person should reasonably have been anticipated by the defendants to follow as the natural and probable result of the original publication at the Chinese Assembly Hall.

There was no liability on the plaintiff to prove that the words were published falsely and maliciously for the law presumes this in his favour. There was no need for the plaintiff to prove malice on the part of the defendants unless and until the defendants could show that the words were published on a privileged occasion.

When the onus of proof on all issues is on one party, that party must ordinarily, when presenting his case, adduce all his evidence, and may not, after the close of his opponent's case, seek to adduce additional evidence to strengthen his own case. Where, however, the onus of proof is partly on the plaintiff and partly on the defendant, the plaintiff may adduce all his evidence in the first instance, or may limit his evidence to those issues the onus of proving which rests upon him, and in that case the plaintiff may, after the close of the defendant's case, adduce evidence to rebut the evidence of the defendant upon those issues the proof of which rested with the defendant. Where a party has a right to adduce further evidence after the close of his opponent's case, the evidence must be strictly confined to rebutting his opponent's case, and must not merely confirm his evidence-in-chief. (*Halsbury's* Laws of England, 3rd Edition, Volume 15, page 271).

The plaintiff in the first instance chose to limit his evidence to those issues the proof of which rested with him and at the conclusion of the evidence of the first three witnesses (P.W.1, P.W.2 and P.W.3) had discharged the onus of proof which rested with him at that stage. The onus was then on the defendants to lead evidence upon those issues the proof of which rested with them, and for the plaintiff, after the close of the defendants' case, to adduce evidence to rebut the evidence of the defendants upon those issues. It was conceded by Mr. Chan and Mr. S. P. Seenivasagam, counsel for the 1st and 2nd defendants respectively, that this was the correct procedure in this case.

The 1st defendant in his amended statement of defence has pleaded qualified privilege, fair comment and justification. The 2nd defendant has pleaded justification.

There are certain essential distinctions between the defence of qualified privilege, fair comment and justification.

First, the defence of fair comment must be distinguished from that of justification. Under the latter, subject to the provisions of section 8 of the Defamation Ordinance, 1957, the defendant must prove the truth of every defamatory fact alleged and every injurious imputation made. Under the former, subject to the provisions of section 9 of the Defamation Ordinance, 1957, the defendant must prove that the facts on which the comment is founded are true and that the comment on these facts is fair. In the case of justification the state of mind of the defendant at the time when he published the defamatory words is immaterial. Thus, the presence of actual malice is irrelevant to the defence of justification. In the case of fair comment the state of mind of the defendant at the time when he published the defamatory words is most material. Thus, he cannot avail himself of any facts as justifying his comment of which he was ignorant at the time when he published the words complained of. And proof of actual malice defeats the defence of fair comment.

Second, the defence of fair comment must be distinguished from that of qualified privilege. In the defence of fair comment the right exercised by the defendant is shared by every member of the public. Everyone is entitled to comment. A newspaper reporter or a newspaper editor has exactly the same rights, neither more nor less, than every other citizen. In that of qualified privilege the right is not shared by every member of the public, but is limited to an individual who stands in such relation to the circumstances that he is entitled to say or write what would be libellous or slanderous on the part of anyone else. For instance, if a master is asked as to the character of a servant, and he says that the servant is a thief, he has a privilege which no one else would have. A privileged occasion is one on which the privileged person is entitled to do something which no one who is not within the privilege is entitled to do on that occasion. A person in such a position may say or write about another person things which no other person in the kingdom can be allowed to say or write. But, in the case of a criticism upon a matter of public interest whether it be the conduct of a public man or a published work, every person in the kingdom is entitled to do, and is forbidden to do exactly the same things, and therefore the occasion is not privileged. Although this technical distinction between the defences of fair comment and qualified privilege exists, both defences are analogous in this respect, that the plaintiff will succeed if he can prove that the defendant was not acting honestly when he wrote the criticism or made the communication, but was actuated by actual malice, that is, by some indirect and dishonest motive. (*Gatley* on Libel and Slander, 5th Edition, page 322). Proof of malice may

take a criticism *prima facie* fair outside the rights of fair comment just as it takes a communication *prima facie* privileged outside the privilege. (Collins M.R. in *Thomas* v. *Bradbury, Agnew Ltd.*[2]).

There is no doubt that the public acts of a public man may lawfully be made the subject of fair comment or criticism, not only by the press, but by all members of the public. But the distinction cannot be too clearly borne in mind between comment or criticism and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used. It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct. (*Davis* v. *Shepstone* [3]).

In this case both justification and fair comment are pleaded. Fair comment is a defence to comment only and not to defamatory statements of fact and section 9 of the Defamation Ordinance, 1957, has not altered the law in this respect. Where there is any defamatory sting in any of the facts on which the comment is based these defamatory statements of fact can only be defended by a successful plea of justification with now the benefit of section 8. (*Broadway Approvals* v. *Odhams Press* [4]). The defence concede that a defence of fair comment is only applicable if a plea of justification succeeds, except in the circumstances indicated in *Mangena* v. *Wright* to which reference is made under heads (1) and (2) below. If a plea of justification fails there is no second defence of fair comment available, except in those circumstances.

The 1st defendant puts his plea of qualified privilege under five heads submitting that the words complained of constitute:—

(1) a fair and accurate report of a debate or proceeding in Parliament and are privileged at common law,

(2) a Parliamentary report published by or under the authority of the House and are privileged by virtue of section 28 of the Houses of Parliament (Privileges and Powers) Ordinance, 1952,

(3) information to the public on a matter of public interest,

(4) a communication in which he and the persons to whom the statement was made had a common interest,

(5) a publication procured to provide a foundation for an action, that is to say that the statement was made at the plaintiff's invitation.

I propose to take the first two heads together. Whereas head (1) can be taken to be applicable to all the words spoken by the 1st defendant in the Chinese Assembly Hall it is conceded by the 1st defendant that head (2) can in any event only be applicable to those words which had actually been spoken in the House of Representatives.

Under head (1) the 1st defendant submits that if a report is fair and accurate it is privileged and quotes as his authority the case of *Wason* v. *Walter*.[5] Publication is privileged on the principle that the advantage of publicity to the community at large outweighs any private injury resulting from the publication. A garbled or partial report of or detached parts of proceedings published with intent to injure individuals will equally be disentitled to protection. No protection is allowed to a report of a single speech out of several delivered in a debate or in a day's proceedings. (*R.* v. *Abingdon* [6] and *R.* v. *Creevy* [7]). It is submitted by the 1st defendant that the report here contained everything that took place on that day on this subject in the House of Representatives.

Under head (2) section 28 of the Houses of Parliament (Privileges and Powers) Ordinance, 1952, provides that such a report is privileged if the court is satisfied that the report was published *bona fide* and without malice. It is not contested that the relevant contents of D.2 were published under the authority of the House.

It was submitted on behalf of the 1st defendant that in *Mangena* v. *Wright* [8] it was held that where a person publishes an extract from a Parliamentary report together with a comment on any allegation contained in such extract, the comment may be defended under a plea of fair comment, even though the allegation on which it is based be untrue. That is so, but only when one person alleges and another person comments.

What was held in *Mangena* v. *Wright* was not as wide as the 1st defendant submits. What Phillimore J. said in this connection in that case at page 976 was:—

> "Then comes the question of comment. Is it fair comment? The plaintiff says it cannot be fair comment because it is founded on untrue statements. No doubt when there is one published document in which the writer partly alleges and partly comments and of which the sum total is defamatory the document cannot be justified unless the facts are true and the comment fair; because if the facts do not warrant a defamatory comment the comment is not fair and if the facts as alleged war a defamatory comment they are defamatory and n be proved to be true. But when one person alleges another comments this reason does not apply. I th this view, if true in other cases, is especially true wh the allegation as distinct from the comment is made a privileged document. If by some unfortunate err a vote in Parliament recites or a judge in giving th reasons of his judgment states that which is derogator to some person and the charge is mistaken and ill-founded and a newspaper reports such vote or judgment, and proceeds in another part of its issue, to comment

upon the character of the person affected in terms which would be fair if the charge were well-founded, the newspaper which so reports and comments should be entitled to the protection of fair comment."

In the present case, assuming that any of the words complained of are comment, it was the 1st defendant who both alleged and commented.

The plaintiff's answer to both heads (1) and (2) is that what was read out at the Chinese Assembly Hall was not a report of Parliamentary proceedings. He conceded that there were two statements contained in the words spoken by the 1st defendant at the Chinese Assembly Hall, but it was submitted that the 1st defendant did not report on the Parliamentary proceedings. The plaintiff further submitted that even if the words spoken by the 1st defendant at the Chinese Assembly Hall, being the words actually spoken by him in the House of Representatives, did constitute a report, that fact did not afford any protection in respect of the words set out in Appendix "A" or Appendix "B" to the statement of claim or the words which he spoke prior to and after speaking the words which he had actually spoken in the House of Representatives. And the plaintiff argues further that even if those words did constitute a report of the words spoken by the 1st defendant in the House of Representatives it was a report produced in another form.

The plaintiff referred to the words of Lord Justice Devlin in the Court of Appeal in the case of *Dingle* v. *Associated Newspaper,*[9] in which the learned Lord Justice said:—

"Privilege attaches to form or occasion but not to substance. What a Member of Parliament says in the House of Commons is privileged; the repetition of the same words outside is not. A report of a judicial or Parliamentary proceeding may be privileged, but if the substance of the matter be cast into another form, the publication is subject to the ordinary law. The object of the privilege is so that the public can obtain a fair report of what is said and decided in Parliament and in courts of law; it is not to confer a licence on anyone to handle the subject-matter thereafter in whatever way he wishes. If Mr. Bromley's story had been printed by itself (and I shall assume for this purpose that it goes no further than the report) it would be no answer to an action for libel to say that the same thing had already been said in the report any more than it would be an answer by a Member of Parliament who spoke slander at a public meeting to say that he had said or could say the same or worse with impunity in the House of Commons."

That case went to the House of Lords where it is reported as *Associated Newspapers Limited & Others* v. *Dingle.*[10] In the House of Lords Lord Denning stated at page 754:—

"If a newspaper seeks to rely on the privilege attaching to a Parliamentary paper, it can print an extract from the Parliamentary paper and can make any fair comment on it. And it can reasonably expect other newspapers to do the same. But if it adds its own spice and prints a story to the same effect as the Parliamentary paper, and garnishes and embellishes it with circumstantial detail, it goes beyond the privilege and becomes subject to the general law. None of its story on that occasion is privileged. It has 'put the meat on the bones' and must answer for the whole joint. If it cannot justify it, it must pay damages: and it cannot diminish these by reference to the privileged reports which it and others may have given previously. It is rather like the position of a Member of Parliament. Within the House he may make all sorts of defamatory statements under the cloak of Parliamentary privilege. If he steps outside and, throwing off his cloak, repeats them at large, he exposes himself to attack. If he fails to justify his words, he must pay damages."

There had already been full publication of the 1st defendant's words in the House of Representatives in the newspapers at the time when the 1st defendant moved the House. In my opinion the words spoken by the 1st defendant in the Chinese Assembly Hall cannot properly be said to be a report of Parliamentary proceedings. What was said went far beyond that. But even if the words spoken by the 1st defendant in the Chinese Assembly Hall can properly be said to have contained a report of what took place in the House of Representatives it seems to me that it was a report which was "cast into another form". In my opinion, therefore, the 1st defendant's defence of qualified privilege under heads (1) and (2) fails.

Under head (3) the 1st defendant pleads that the words spoken were information to the public on a matter of public interest. When considering this head it will be as well to keep in mind that the words spoken by the 1st defendant in the House of Representatives had already received full publication in the newspapers at the time when the 1st defendant moved the House.

The 1st defendant submits that there are occasions when a person or a newspaper may be entitled to claim privilege for the publication of statements of a general and public interest. The 1st defendant referred to *Allbutt* v. *General Council of Medical Education and Registration* [11] in which Lord Justice Lopes said at page 412:—

"This case, in our view, goes far to show that proceedings such as these, where the facts are ascertained and finally adjudicated upon, are privileged. *Cox* v. *Feeney* (4 F. & F. 13), decided in 1863, was a *nisi prius* decision, and Cockburn C.J., spoke with approval of the dictum of Lord Tenterden C.J., viz., that 'a man has a right to publish, for the purpose of giving the public information, that which it is proper for the public to know;' and told the jury that the publication of a matter of a public nature, and of public interest, and for public information, was privileged, provided it was published with the honest desire to afford the public information, and with no sinister motive."

and again at page 413:—

"It is also said that the privilege is lost because there has been a publication to the public at large, to a class beyond those interested in the matter; but this we

have disposed of, because, in our opinion, the public at large were interested in these proceedings, and their publication was information to which the public were entitled."

In further support of his submission that the publication of matter *bona fide* for the purpose of informing the public upon matters which they were concerned to know is privileged the 1st defendant refers to the cases of *Laughton* v. *Bishop of Sodor and Man,*[12] *Mangena* v. *Wright, supra, Adam* v. *Ward* [13] and *Perera* v. *Peiris.*[14]

It is submitted on behalf of the plaintiff that the public interest is not furthered by the making of wild allegations which have not been proved. The plaintiff submits that *Allbutt's* case is authority for the proposition that such proceedings are privileged only where the facts are ascertained and finally adjudicated upon. In *Perera* v. *Peiris* the publication was that of a report of a commission of inquiry and consequently the facts had been ascertained and adjudicated upon in that case. In *Purcell* v. *Sowler* [15] it was held that no privilege attached where the facts were in controversy and were not ascertained and had not been finally adjudicated upon.

I agree with this submission. On the evidence in the present case the facts had not been ascertained and had not been finally adjudicated upon. In these circumstances therefore it seems to me that the 1st defendant's defence under head (3) also fails.

In any event in my opinion there was no duty on the 1st defendant to inform the public on this matter even though it might be said to be a matter of public interest. The public had already been informed in the national newspapers of the motion moved by the 1st defendant in the House of Representatives. His statement there had been very fully reported. There was, therefore, no need for the public to be further informed.

Under head (4) the 1st defendant pleads that the words spoken by him at the Chinese Assembly Hall constituted a communication in which he and the persons to whom the statement was made had a common interest.

A common interest for the purpose of the defence of qualified privilege to an action for libel occurs where the words complained of as defamatory were published in pursuance of an interest or of a duty, legal, social, or moral, to publish them to the person to whom they were published and the person to whom they were published had a corresponding interest or duty to receive them. The reciprocity is essential. The *bona fide* belief of the defendant that there existed such an interest or that he was under such a duty to make the communication is immaterial, for the thing which is relevant to the question whether or not the occasion was privileged is the existence in fact of the duty or interest and not merely the defendant's belief in the existence of the one or the other.

Reciprocity of interest is essential to found the privilege. Reciprocity of interest does not mean that there must be some special relationship between the defendant and the person to whom he makes the communication. All that means is that the interest must exist in the party to whom the communication is made as well as in the party making it. It is not sufficient that the defendant honestly and reasonably believed that the person to whom he made the communication had an interest in the subject-matter thereof. If, in fact, he had none, there is no privileged occasion.

It is the duty of everyone, in the interest of public efficiency and good order, to bring any misconduct or neglect of duty on the part of a public officer or employee, or any public abuse, to the notice of the proper authority for investigation. Any complaint or information as to such misconduct, neglect of duty, or abuse, though volunteered, is privileged, provided it is made in good faith to the person or body who has the power or duty to remove, punish or reprimand the offender, or merely to inquire into the subject-matter of the complaint. Any citizen who *bona fide* believes that wrong has been done has the right and duty to bring the alleged fact before the proper authority for investigation. In doing so he exercises an undoubted privilege which it is not in the public interest to penalise.

But no privilege will attach to any such complaint or information if addressed to a person or body having no jurisdiction or control over the person whose conduct is impugned nor any power or duty to grant redress for, or inquire into, the abuse complained of. No protection can be afforded to a person who wrongly assumes the facts which constitute a privileged occasion. So no privilege will attach to a complaint as to the conduct of a public official if it is given out for publication in the newspapers in advance of its delivery to the proper authority for investigation.

In support of his plea of common interest the 1st defendant quotes the case of *Laughton* v. *Bishop of Sodor and Man, supra.* That case is, I think, clearly distinguishable on its facts from the present case because the Bishop was dealing with his own clergy and clearly had an interest in explaining and defending his conduct and the clergy would be deeply interested in

that explanation. The 1st defendant also referred to *De Buse* v. *McCarthy* [16] which, however, is a case which seems to me to be more against the 1st defendant than for him. The 1st defendant also drew analogies with some cases dealing with the duty of directors towards shareholders. There is, I think, no real analogy here because shareholders have statutory rights.

I agree with Mr. Hill on behalf of the plaintiff that the judgments of Lord Justice du Parcq and Lord Justice Goddard in *De Buse* v. *McCarthy* are very much in point. At page 169 Lord Justice Goddard said:—

"I expect that borough councils, like other public bodies and public officials, receive many letters making charges or complaints against not only their own members or officials, but against other rate-payers and residents in the borough. If it were held that the publication of this document was privileged and that the council had an interest in communicating it to the rate-payers, we should have to hold that any council which adopted the course of putting in their agenda libellous letters which they had received by way of complaint and then broadcasting it by affixing it outside the Town Hall would be protected. It might well be, also, that highly confidential documents would be received by the council and would have to be considered at a council meeting. Complaint, for instance, regarding the conduct of a high official might be made direct to the Minister of Health by some disgruntled rate-payer. The Minister of Health might refer that complaint, which might be wholly libellous and do untold damage to the individual, and ask for the council's observations on it. Can it be said that the council would be justified in publishing that communication from the Minister of Health merely because they were going to consider it at their meeting? They might come to the conclusion that the complaint was absolutely groundless. I can see no ground whatever for saying that the occasion on which this document was published comes within the orbit of the privilege which attaches to the occasions on which documents are published where the person publishing it and the person to whom it is published have a common interest."

and at page 170 Lord Justice du Parcq said:—

"In *Rex* v. *Rule* ([1937] 2 K.B. 375) the court had to assume that the defendant had acted honestly and with a belief in the truth of his statements. He was an inhabitant of Southampton, and according to him he had evidence of gross and criminal misconduct on the part of an important member or important members of the local police force. Nobody can doubt that he had an interest, if not a duty, to communicate such facts, if facts they were, to the Home Secretary. In order to effect the object of acquainting the Home Secretary with those facts, he approached him through the member of Parliament for the division, and the only question before the court was whether it could be said that there was a sufficient interest in the member of Parliament to receive the complaint. The court answered that question in the affirmative. That seems to me to be a result which would not startle anybody, because most people would say, I imagine, that a constituent was fully entitled to seek the aid of the member representing the division to bring what were alleged to be facts on the conduct of a public official before the responsible Ministry of the Crown. That, and that alone, was decided by that case.

To find an analogy to the present case one would have to assume, if such assumption might be made without any reflection on members of Parliament, that a member of Parliament who received such information from a constituent were to say: 'It is to my interest to show how vigilant I am in all that concerns my constituency', and to further that interest were to read out to a meeting of electors, the highly defamatory statements which had been handed to him for transmission to the Secretary of State. I cannot imagine any court holding in such a case that a legitimate interest was being furthered or protected by the member of Parliament."

In the present case the persons present in the Chinese Assembly Hall had no jurisdiction or control over the person whose conduct was impugned, that is the plaintiff, nor any power or duty to grant redress for, or inquire into, the abuse complained of. No privilege therefore attaches to the 1st defendant's complaint as to the conduct of the plaintiff because it was published in advance of its delivery to the proper authority for investigation. The 1st defendant should have waited until the truth or otherwise of the allegations had been established before embarking on publication. The 1st defendant wanted the answer determined but was not prepared to wait.

Under head (5) the 1st defendant pleads that the words constituted a publication procured to provide a foundation for an action, that is to say that the words were spoken at the plaintiff's invitation. Where this is pleaded, if it can be proved that the plaintiff expressly or impliedly assented to, or acquiesced in, the publication of the defamatory matter no action will lie. *Volenti non fit injuria.* Evidence of assent must, however, be clear and unequivocal. Though the publication be brought about by the contrivance of the plaintiff with a view to the foundation of an action against the defendant it is nonetheless an actionable publication.

Where a person originates a slander and afterwards repeats it in answer to a question asked by the person slandered in the presence of a third person brought by him for the purpose of hearing the slander, or in answer to a question asked by a third person who inquires into the matter on behalf of the person slandered, the repetition is not a privileged communication; it is an aggravation of the slander. An attempt by a person who deems himself injured to ascertain truly what slanderous imputations have already been cast upon him can hardly be allowed to justify their renewal. But where a person does not originate a slander, and to an inquiry by the person whose character is affected makes an answer in the presence of a third person, such answer is privileged.

Accordingly where the plaintiff either personally or through his agent invites or procures the publication of defamatory matter for the purpose of making it the foundation of an

action, the communication will be privileged, unless there has been a previous publication of the same defamatory matter by the defendant.

It was contended by the 1st defendant that the publication of the slander and libels in the Chinese Assembly Hall was procured by the plaintiff to provide a foundation for an action and that no action will lie. In support of this contention the 1st defendant quoted a number of cases, including *Warr* v. *Jolly*,[17] *Kine* v. *Sewell*,[18] *Weatherstone* v. *Hawkins*,[19] *Rogers* v. *Clifton*[20] and *King* v. *Waring*.[21] It was argued on behalf of the plaintiff however that all the cases referred to by the defence were either (1) cases of a trap or (2) where there had been unqualified invitation or procuration of the publication. In *Warr* v. *Jolly* the defamatory statement was made in answer to the plaintiff's own questions. In *Kine* v. *Sewell* it was held that a proper enquiry on a proper occasion is privileged. *Weatherstone* v. *Hawkins* was a case of privilege attaching to the giving of a report by a master of his servant. *Rogers* v. *Clifton* and *King* v. *Waring* were also master and servant cases, in which the plaintiff set a trap.

It was argued on the part of the plaintiff that there were a number of alternatives open to the 1st defendant. The 1st defendant could have (1) said nothing, (2) apologised, blaming the fact that he had been misled by the 2nd defendant, (3) refused to take any part in it because the plaintiff "should not destroy Parliamentary privilege by challenging another", (4) repeated exactly what he said in the House without embellishment. Instead of that the 1st defendant embellished his original remarks and gave the 2nd defendant an opportunity to distribute the statement which he, the 1st defendant, knew by the 11th September, 1963, was highly defamatory.

The plaintiff submitted that there was (1) no need for the 1st defendant to do anything more than read out what he had said in the House making it clear that it was an extract from a Parliamentary paper, (2) no obligation on the 1st defendant to publish the gratuitous defamatory statements referred to in paragraph 3 of the amended statement of defence, (3) no obligation on the 1st defendant to publish Appendix "B" to Mr. Tilak who he knew was a newspaper correspondent and who he knew was going to publish what was in Appendix "B" and (4) no obligation on the 1st defendant to give the 2nd defendant his cue to hand around his statement together with a photostat of one of the cheques referred to in that statement. The 1st defendant knew what the 2nd defendant was going to do, what the contents of the statement was, and that the cheque was going to be handed round. In addition the plaintiff argued that there were the letters (at pages 32, 33 and 34 of "A") and there was the note (P.1). The plaintiff said that P.1 was itself an invitation by the 1st defendant to name the date and the time of the meeting. The plaintiff's letter offered an alternative. At the conclusion of the 1st defendant's letter of the 6th September, 1963, the 1st defendant added the words "Hoping to see you".

The 1st defendant argues that as the first publication was privileged then the second publication was also privileged and quoted as his authority for this the case of *Taylor* v. *Hawkins*.[21] It was argued for the plaintiff, however, that none of the three judgments in that case said that the second statement was privileged because the first was privileged. Both statements were privileged for the same reason. In other words the second statement was privileged in its own right.

In my opinion the publication was not procured by the plaintiff.

The only words the publication of which I think might even remotely be said to have been procured were the words which had actually been spoken by the 1st defendant in the House of Representatives. The publication of neither the 1st defendant's opening remarks, nor the 1st defendant's closing remarks, nor Appendix "A", nor Appendix "B" could be said to have been procured by the plaintiff. The plaintiff was not aware of the existence of Appendix "A". The 1st defendant was challenged to do one of two things and was not invited to do one thing only. There were a number of courses of action open to him.

In my opinion therefore the 1st defendant's defence under head (5) also fails.

In case I am wrong in these findings on the 1st defendant's defence of qualified privilege I must deal with the question of malice.

Qualified privilege can be rebutted by proof of express malice, that is malice other than that to be implied from the defamatory words themselves. Malice may be inferred either from the terms of the communication itself, e.g. where the language is unnecessarily strong, or from any facts which show that the defendant in publishing the words complained of was actuated by spite or by some indirect motive.

Actual malice does not necessarily mean personal spite or ill-will. Malice in the actual sense may exist, even though there be no spite or desire for vengeance in the ordinary sense. Any indirect motive other than a sense of duty is what the law calls malice. Malice means making use of the occasion for some

indirect purpose. If the occasion is privileged it is so for some reason, and the defendant is only entitled to the protection of the privilege if he uses the occasion for that reason. He is not entitled to the protection if he uses the occasion not for the reason which makes the occasion privileged, but for an indirect or wrong motive — an improper motive, some motive other than that which alone would excuse him — some indirect motive not connected with the privilege.

The existence of indirect motive or malice may be proved by extrinsic evidence, that is, something outside the libel itself, e.g. by expressions of personal spite or ill-will towards the plaintiff or by threats made against him, or by showing that the defendant had some previous quarrel with the plaintiff, or brought unsuccessful actions against him. So anything that shows that the plaintiff and the defendant lived on bad terms may bear on the issue of malice.

Where the plaintiff must prove express malice, if he can show any example of spite or indirect motive, whether before or after the publication, he would establish his case, provided that the examples given are so connected with the state of mind of the defendant as to lead to the conclusion that he was malicious at the date when the libel was published. No doubt the evidence must be more consistent with malice than with an honest mind, but this does not mean that all the evidence adduced of malice towards the plaintiff on the part of the defendant must be set against such evidence of a favourable attitude towards him as has been given. On the contrary, each piece of evidence must be regarded separately and even if there are a number of instances where a favourable attitude is shown, the case tending to establish malice would be sufficient evidence on which to find for the plaintiff. Nevertheless each particular instance of alleged malice must be carefully analysed, and if the result is to leave the mind in doubt then that piece of evidence is valueless as an instance of malice, whether it stands alone or is combined with a number of similar instances.

But malice is not only provable by extrinsic evidence: it may be intrinsic, that is, to be inferred from the terms of the alleged libel itself. It may be that the language used in a libel, though under other circumstances justifiable, may be so much too violent for the occasion and circumstances as to form strong evidence of malice, and that an inference of actual malice may be drawn from its use.

The 1st defendant says that the publication was not excessive and in no way exceeded the occasion. The presence of reporters at the Chinese Assembly Hall was not within his control, he held no grudge or ill-will against the plaintiff either personally or politically, and therefore there is no evidence of malice.

The plaintiff, however, states that the 1st defendant did not make inquiries as to the truth of the allegations before the meeting at the Chinese Assembly Hall. The only inquiries he made between the statement in the House and the meeting at the Chinese Assembly Hall was to have an interview with the 2nd defendant. To make the statement he did at the Chinese Assembly Hall without making inquiries was to incur a grave risk which would not have been taken by a prudent or reasonable man. The plaintiff maintains that a reasonable or prudent man would have been careful and made further inquiries before doing so and would have interviewed a number of people. The plaintiff submits that the fact that the 1st defendant did not do so was because his desire to make political capital outweighed his sense of caution.

The 1st defendant is an experienced criminal lawyer and in my opinion could have been expected first of all to realise the dangers of acting on secondhand information. Inche Zulkiflee had first informed him about the matter. Inche Zulkiflee was a leader of an opposition party and might have been expected to air the matter in the House himself. However the 1st defendant was satisfied with Inche Zulkiflee's explanation that he did not wish to raise the matter himself because it would appear that a Malay was attacking a Malay. Politics being what they are one could be forgiven for being a little sceptical about this explanation. And secondly he could have been expected to realise the dangers of acting on the word of a complaint in what was apparently an allegation of corrupt practices in which this complainant was involved. There were a number of inquiries which he could and might in such circumstances have been expected to make and which he did not. For example in relation to alleged payments to the plaintiff's wife he made no inquiries as to who had cashed the relevant cheques or endeavoured to interview the persons who had endorsed those cheques. He apparently made no effort to interview either Mr. Corkett, or Mr. Warren or Inche Ishak or Inche Sabri or Mr. Warren's driver or Mr. Warren's cook. He made no inquiries whether Inche Musa had been to see the District Officer, Jerantut. I do not say that he should necessarily have made inquiries from all these people but in all the circumstances it seems to me remarkable that he did not make inquiries from some persons other than the 2nd defendant prior to the meeting at the Chinese Assembly Hall.

I think that the only reasonable inference

to draw from this is that the 1st defendant's desire to make political capital did as the plaintiff alleges outweigh his sense of caution and this shows that what he did at the Chinese Assembly Hall was actuated by malice.

That brings us to the plea of justification. The defence of justification is pleaded by both the 1st and 2nd defendants and is the 2nd defendant's only defence.

To establish a plea of justification, the defence must prove that the defamatory imputation is true. It is not enough for him to prove that he believed that the imputation was true, even though it was published as belief only. If *A* says of *B* that *A* believes *B* committed murder *A* cannot justify by saying and proving that *A* did believe it. *A* can only justify by proving the fact of murder. Similarly, if the defendant has written that *A* said that *B*, the plaintiff, had been convicted of theft it will be no defence for the defendant to prove that *A* did tell him so, that he honestly believed what *A* said, and only repeated it. He must prove as a fact that *B* was convicted of theft. If *A* repeats a rumour *A* cannot say that it is true by proving that the rumour in fact existed. *A* must prove that the subject-matter of the rumour is true. Again, if the words impute the commission of a specific offence, it is not enough to prove that the plaintiff was suspected of the alleged offence, or that he has a general reputation for committing such offence, although that may be proved in mitigation of damages. To succeed in his plea of justification, however, the defendant must prove as a fact that the plaintiff did commit the offence.

Again, under a plea of justification the defendant must justify the precise imputation complained of. If the words impute a specific offence, e.g. stealing a watch it is not enough to prove that the plaintiff was guilty of another offence though of the same character, e.g. stealing a clock. If the words impute that the plaintiff stole a watch from *A* it is not enough to prove that the plaintiff stole a watch from *B*. If the words impute that the plaintiff stole a watch on a particular day, it is not enough to prove that the plaintiff stole a watch on some other day.

At comon law, under a plea of justification, the defendant must prove the truth of all the material statements in the libel; there must be a substantial justification of the whole libel. If any material part were not proved true, the plaintiff was at common law entitled to damages in respect of such part, provided it would, by itself, form a substantial ground of an action for libel. By section 8 of the Defamation Ordinance, 1957, however, it is now provided that in an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

It is admitted by both the plaintiff and the 1st and 2nd defendants that in order to justify the onus on the 1st and 2nd defendants is to establish substantially the truth of the words contained in Appendix "A" to the statement of claim. In my opinion the words used do not allege the commission of a criminal offence by the plaintiff and accordingly the standard of proof is the balance of probabilities.

The 1st defendant presumably had foreseen that whether the 2nd defendant's story was substantially true or not evidence to substantiate that story would be difficult to obtain because in the main the relevant witnesses would be likely to be hostile and he would be in no position directly to discredit them. The 2nd defendant presumably appreciated that he would also be faced with the same problem. The 1st defendant, of course, was not himself able to give any evidence as to the truth or otherwise of the 2nd defendant's allegations. Their problem becomes clearer when it is realised that upon those issues the proof of which rested with them the defendants had to call as witnesses the plaintiff's father-in-law, Che Musa (D.W.3) and the plaintiff's wife, Che Rahmah (D.W.5). In the event the 1st defendant called the Mentri Besar, Pahang, (D.W.2) and Che Musa (D.W.3) and the 2nd defendant called Che Rahmah (D.W.5) as their only witnesses apart from themselves.

If I understand Mr. Rintoul correctly he submitted in his final address on behalf of the plaintiff that the Mentri Besar, Pahang, (D.W.2) and Che Musa (D.W.3) were called by the 1st defendant. The 1st defendant presumably called them as witnesses of truth and they have not been discredited by him, so that he cannot be heard to say that their evidence is untrue. Their evidence does not support the 1st defendant's case and as a result the 1st defendant cannot be said to have discharged the onus which is on him and accordingly he has failed in his plea of justification. Had this submission been made at the close of the defendants' case it might or might not have carried some weight. But at this stage of the case a decision must be arrived at on the balance of probabilities after due consideration not only of the evidence of the defendants and the witnesses called by them but also of the evidence of the plaintiff and the witnesses called by him and also after due consideration of the impression given by those

witnesses while giving evidence in the witness box.

I have already set out certain facts disclosed in evidence which led up to the meeting at the Chinese Assembly Hall on the 11th September, 1963. There is substantially no contest between the parties as to these facts. For example, the facts, alleged in the statement of claim in D.3 have not been questioned nor has it been questioned that the issue of a temporary occupation licence in respect of the year 1963 was refused and that the fees forwarded for the payment for such licence were returned.

The 2nd defendant had held a licence to extract guano since 1960.

The 2nd defendant did form the old company on the 11th December, 1961.

The old company did apply for a 15 year lease and a licence to extract guano.

The 2nd defendant, Che Musa (D.W.3) and Che Sabri (P.W.10) did go and see the Mentri Besar, Pahang, (D.W.2) at the end of 1961 or the beginning of 1962 in connection with this application for a 15 year lease and a licence.

The 2nd defendant did enter into an agreement with Messrs. Warren, Corkett and Hughes on the 30th May, 1962.

The licence to extract guano held by the 2nd defendant in his own name was due to expire on the 30th June, 1962.

It was important that the 15 year lease and the licence be granted as soon as possible.

There was a delay in the issue of the 15 year lease and the licence.

The 2nd defendant did apply to the plaintiff in July and again on the 10th August, 1962, to help in expediting the issue of the 15 year lease and the licence.

The plaintiff did phone the Mentri Besar, Pahang, (D.W.2) on the 10th August, 1962.

A letter was written to the Bank of America on the 14th August, 1962, asking for an account to be opened in the name of the old company and informing the Bank that the signatories to the old company's cheque would be the 2nd defendant and Che Rahmah (D.W.5)

A letter was written by the Mentri Besar, Pahang, (D.W.2) to the plaintiff on the 21st August, 1962.

The State Government did agree to grant temporary occupation licences for 3 years and a licence to extract guano was issued on the 8th October, 1962, by which time all licence and T.O.L. fees and deposits had been paid.

Sometime after the 8th October, 1962, there was a meeting between Che Ishak (P.W.6), Che Sabri (P.W.10) and the 2nd defendant in Che Ishak's (P.W.6) house in Kota Bharu.

A draft agreement was prepared by Che Ishak (P.W.6).

Sometime in the latter part of October or in November, 1962, there was a meeting between Che Ishak (P.W.6), Che Sabri, (P.W.10) and the 2nd defendant in Inche Osman's house in Kuala Lumpur.

On the 26th November, 1962, Che Rahmah (D.W.5) did send a letter to the Bank of America withdrawing her name as a signatory of the old company's cheques.

On the 4th December, 1962, Che Sabri (P.W.10) did resign as a director of the old company.

Between the 3rd and the 17th December, 1962, the old company did negotiate with the Malayan Phosphate Company Limited and Messrs. Warren, Corkett and Hughes on the terms of a new agreement.

On the 12th December, 1962, the new company was registered by Che Ishak (P.W.6) on behalf of Che Musa (D.W.3).

Che Musa (D.W.3) was one of the first directors of the new company.

At the beginning of January, 1963, the Malayan Phosphate Company Limited did refuse to enter into a new agreement in the terms of an already agreed draft.

Temporary occupation licences do require to be renewed on the 1st January each year.

Temporary occupation licence fees for 1963 were refused.

The old company did issue a writ on the 22nd January, 1963, against the Malayan Phosphate Company Limited claiming possession of the land.

There was a meeting between the 2nd defendant, the Mentri Besar, Pahang, (D.W.2) and Che Musa (D.W.3) at the Mentri Besar's office on the 23rd January, 1963.

On the 28th January, 1963, the new company did apply for a licence to extract guano in respect of the area already covered by the old company's licence which was still in existence.

On the 27th May, 1963, the old company's licence was withdrawn.

On the 7th August, 1963, a licence to extract guano was issued to the new company.

It is against this background that the events which are in issue must be viewed.

The points in issue are:—

(1) What happened at the interviews between the 2nd defendant and the plaintiff in July and on the 10th August, 1962?

(2) Whether there was a meeting between the 2nd defendant and the plaintiff on the 15th October, 1962, and if so, what happened?

(3) Why did the 2nd defendant and Che Sabri (P.W.10) go to Kota Bharu and see Che Ishak (P.W.6) in his house and what happened at the interview with Che Ishak (P.W.6) in Inche Osman's house in October/November, 1962?

(4) What was the reason for the breakdown in the relations between the plaintiff and the 2nd defendant which had been so cordial at least up to the middle of October, 1962?

(5) Whether the proceeds of the cash cheque No. 82876 dated the 12th September, 1962, for $500 and the cash cheque No. 82883 dated the 25th September, 1962, for $500 both drawn on the old company's account at the Bank of America were given to and accepted by Che Rahmah (D.W.5) for her own use?

(6) Whether $1,000 in cash was given to Che Rahmah (D.W.5) by the 2nd defendant in July, 1962, for her own use?

(7) Whether $3,000 in cash was given to the plaintiff by the 2nd defendant in August and September, 1962, for his own use?

On the first point at issue both the 2nd defendant and Che Sabri (P.W.10) stated that they saw Che Rahmah (D.W.5) in July, 1962, before seeing the plaintiff and that it was she who arranged for them to see the plaintiff. Che Rahmah (D.W.5) denied that she arranged this meeting. As the 2nd defendant was then living in the plaintiff's house it is probable that Che Rahmah (D.W.5) was at least aware that they wished to see the plaintiff. In any event there was a meeting between the plaintiff, the 2nd defendant and Che Sabri (P.W.10) at which they asked the plaintiff to assist them in expediting the issue of the lease and the licence. It would appear that at this meeting the plaintiff did not take any action other than advising them to be patient. The 2nd defendant stated that at this meeting the plaintiff asked what they were prepared to give him if he helped in getting the licence issued quickly and the 2nd defendant replied that he could give a 25% share of the old company's interest which was valued at about $50,000 and that on hearing this the plaintiff agreed to help. The plaintiff and Che Sabri (P.W.10) denied that any conversation regarding a share in the old company took place.

Che Sabri (P.W.10) said that he only attended one meeting with the plaintiff and I think that there is little doubt that it was the first one because firstly he confirmed the 2nd defendant when he said that the plaintiff did not take any action at this meeting but only advised them to be patient and secondly he made no reference to the plaintiff telephoning to the Mentri Besar, Pahang.

The 2nd defendant said that he again went to see the plaintiff on the 10th August, 1962, to find out what, if anything, had happened because the lease and the licence had still not been issued and the plaintiff then and there telephoned to the Mentri Besar, Pahang, (D.W.2) and informed the Mentri Besar that there had been a complaint of delay in the issue of the lease and the licence and inquiring what the cause of the delay was. The Mentri Besar (P.W.2) stated that he would make inquiries and let the plaintiff know. The 2nd defendant said that at this meeting the question of the plaintiff's share was again mentioned and the plaintiff requested that his wife, Che Rahmah (D.W.5) should be a co-signatory of the company's cheques so that there would be some check on the company's financial activities. This was denied by the plaintiff. Nonetheless what purported to be a resolution of the old company dated the 10th August, 1962, was forwarded to the Bank of America on the 14th August, 1962, with a request that an account should be opened in the name of the old company with the 2nd defendant and Che Rahmah (D.W.5) as the co-signatories of the old company's cheques.

On the second point at issue, the 2nd defendant stated that on the 15th October, 1962, Che Rahmah (D.W.5) telephoned him in the morning and asked him to come to the plaintiff's house in Kia Peng Road, Kuala Lumpur, because the plaintiff wanted to see him. On arrival there the 2nd defendant said that the plaintiff suggested:—

(1) that Che Musa (D.W.3) should be made a director of the old company and receive a payment of $200 per month;

(2) that Che Rahmah (D.W.5) should be employed as a temporary secretary by the old company with an allowance of $200 per month;

(3) that the nephew of the plaintiff should be employed as a clerk by the old company at a salary of $160 per month;

(4) that the office of the old company should be installed in a room at the back of the plaintiff's house in Kia Peng Road, Kuala Lumpur, and

(5) that the old company's car should be kept at Kia Peng Road when not in use on the business of the old company.

The 2nd defendant said he did not agree to any of these proposals. It was denied by the plaintiff that any such meeting had ever taken place.

On the third point at issue, the 2nd defendant said that sometime after that meeting, that is to say after the 15th October, 1962, a meeting took place at the house of one Inche Osman in Kuala Lumpur at which the 2nd defendant, Che Sabri (P.W.10) and the lawyer, Che Ishak (P.W.6) were present. It is not entirely clear when this meeting took place. It was, however, after the 2nd defendant and Che Sabri (P.W.10)

had been to Kota Bharu and seen Che Ishak (P.W.6) there. The draft agreement prepared by Che Ishak (P.W.6) in Kota Bharu on that occasion recites the Licence No. 32235 dated the 8th October, 1962, issued to the old company and accordingly the visit to Kota Bharu must have taken place sometime after that date. The subsequent meeting in Inche Osman's house in Kuala Lumpur took place after the Kota Bharu meeting and is likely to have taken place certainly not earlier than the latter part of October, 1962, and very probably in my opinion in November, 1962. The 2nd defendant alleges that at that interview in Inche Osman's house in Kuala Lumpur Che Ishak (P.W.6) on behalf of the plaintiff suggested that out of the $8.40 which was the tribute per ton which Messrs. Warren, Corkett and Hughes had agreed to pay under the agreement dated the 30th May, 1962, $3 should be paid to the plaintiff. An argument ensued in which the 2nd defendant stated that the most that could be paid to the plaintiff would be $1.05 and not $3 to which he said Che Ishak (P.W.6) replied that the plaintiff would never agree to that. Che Ishak (P.W.6) and Che Sabri (P.W.10) denied that any such conversation had taken place. Che Ishak (P.W.6) said that he went to Kuala Lumpur on another matter and was staying with Inche Osman. He said that he called the 2nd defendant and Che Sabri (P.W.10) to Inche Osman's house to inquire whether the agreement which he had drafted in Kota Bharu for them was acceptable and what the position with regard to the matter was. He said that on telling the 2nd defendant that he would have to go back to Kota Bharu but could not leave the draft agreement uncompleted the 2nd defendant said it did not matter as they would go to the old company's solicitors. Che Ishak (P.W.6) stated that it was only then that he learnt that the old company already had some solicitors. Che Ishak (P.W.6) said that he then inquired what solicitors and the 2nd defendant then told him that Messrs. Allen & Gledhill were the old company's solicitors. Che Ishak (P.W.6) said that he did not know what work Messrs. Allen & Gledhill had done for the old company. He said that the 2nd defendant did not tell him that Messrs. Allen & Gledhill had previously prepared an agreement in connection with another transaction. He said that as the old company had its own solicitors he did not want to act any more.

On the 4th point at issue it was the 2nd defendant's contention that the breakdown of the relations between himself and the plaintiff was due to his refusing to accede to the plaintiff's demands. Although it is clear that the breakdown occurred subsequent to the 15th October, 1962, it is not altogether clear how long after this date the breakdown took place. The 2nd defendant and his family appear to have left the plaintiff's house about a fortnight after the wedding between the 2nd defendant's daughter and the plaintiff's youngest brother on the 30th September, 1963. Both the plaintiff and Che Rahmah (D.W.5) said that after the 2nd defendant and his family had left their house the 2nd defendant still continued to come to their house. From paragraph 8 of the 2nd defendant's statement (page 48 of bundle "A") it looks as if the breakdown took place immediately after the meeting of the 15th October, 1962. However I do not think that this is what the 2nd defendant intended to convey. I think that what the 2nd defendant was saying was that after he had rejected all the plaintiff's demands the breakdown occurred. The breakdown did take place in point of time after the meeting of the 15th October, 1962, but between that date and the breakdown there was the further meeting at Inche Osman's house in Kuala Lumpur at which the 2nd defendant said that Che Ishak (P.W.6) made further proposals on behalf of the plaintiff. I think that what the 2nd defendant intended to convey was that certain proposals were made on the 15th October, 1962, which were turned down by him and that subsequently fresh proposals were made by Che Ishak (P.W.6) on behalf of the plaintiff at Inche Osman's house in Kuala Lumpur and that these proposals were also turned down by him and that it was only after that that relations broke down. The probabilities are therefore that the breakdown took place, as Che Rahmah (D.W.5) said, in November. It is noteworthy that Che Rahmah (D.W.5) continued to sign the old company's cheques until somewhere about the 9th November, 1962.

In any event the plaintiff's and Che Rahmah's (D.W.5) version of the reason for the breakdown was that the 2nd defendant had asked Che Rahmah (D.W.5) to sign a blank cheque. This Che Rahmah (D.W.5) said she had refused to do. Che Rahmah (D.W.5) said that she then informed her husband, the plaintiff, for the first time of her being a co-signatory of cheques of the old company and of her being asked by the 2nd defendant to sign a blank cheque and she said that the plaintiff was very angry when he heard this, because he did not like her being involved in the business affairs of the old company. The plaintiff stated that he also considered that Che Rahmah (D.W.5) had been tricked into agreeing to become a co-signatory of the old company's cheques. Thereupon he drafted the letter dated the 26th November, 1962, (page 16 of bundle "A") which was signed by Che Rahmah (D.W.5) and sent to the Bank of America.

I think it will be best if I dispose of the first four points in issue before coming to the question of payment of money by cheques and in cash to Che Rahmah (D.W.5) and in cash to the plaintiff. While disposing of these four points the opinions I have formed as to the reliability and veracity of the main witnesses together with the reasons for those opinions will become apparent and these together with my view as to the facts of the case and the inferences to be drawn from them will make the disposal of the question of the payments of money easier.

Before dealing with the first four points in issue individually, however, it is necessary to refer to the statement of the 2nd defendant dated the 7th August, 1963, that is the statement containing the words contained in Appendix "A" to the statement of claim. With regard to this statement I think that the evidence discloses that, except where there is some documentary or other evidence to give a clear indication, when he wrote the statement the 2nd defendant's mind was not very clear as to when events happened. In addition in certain places the 2nd defendant has exercised his imagination as to what took place on an occasion at which he was not present, for example, at paragraph 9 of the statement (page 49 of bundle "A"). This can I think be fairly described as "inspired" guesswork on the part of the 2nd defendant assuming that the backbone of his story is true. Although therefore the 2nd defendant's statement does contain certain things which he considered might in all the circumstances have happened without his being in a position to know for certain that they did happen, and although there is an uncertainty as to time, that by itself does not necessarily mean in my opinion that what I have described as the backbone of the story is untrue.

I do, however, think that the 2nd defendant's evidence can only be accepted with caution. The evidence has disclosed that the 2nd defendant is a thoroughly unreliable individual. He has shown himself to be an incompetent business man whose standard of honesty can be gauged by the personal uses to which he put the old company's money. For example, he does not appear to have had any qualms of conscience whatever in using the old company's money to pay for the wedding expenses of his daughter to the plaintiff's youngest brother. He is a witness whose evidence cannot be accepted unless it is corroborated directly or by reasonable inferences drawn from the evidence.

In addition before dealing with the first four points in issue individually there are a number of matters which should be noted.

The first thing to note is that the 2nd defendant's father and Che Musa's (D.W.3) wife were cousins. Che Musa (D.W.3) is the father of the plaintiff's wife, Che Rahmah (D.W.5) and accordingly the 2nd defendant and Che Rahmah (D.W.5) are second cousins. The 2nd defendant's daughter and the plaintiff's youngest brother were married on the 30th September, 1962. The 2nd defendant's family was living in the plaintiff's house from March until the middle of October, 1962, and the 2nd defendant himself was living there from June, 1962, until about the middle of October, 1962. It is apparent, therefore, that at any rate until the middle of October, 1962, they were relatives living under one roof and that the relations between them were very cordial.

The second thing to note is that Che Musa (D.W.3) had known all about the guano business in relation to the caves at Kota Gelanggi ever since the end of 1961 or the beginning of 1962. Che Musa (D.W.3) was present when the 2nd defendant and Che Sabri (P.W.10) went to see the Mentri Besar, Pahang, (D.W.2) at the end of 1961 or the beginning of 1962. Che Musa (D.W.3) was the prime mover in the formation of and was one of the original directors of the new company which was registered on the 12th December, 1962. Che Musa (D.W.3) was present at the meeting between the 2nd defendant and the Mentri Besar, Pahang, (D.W.2) at the Mentri Besar's office on the 23rd January, 1963. Che Musa (D.W.3) applied in the name of the new company for a licence to extract guano from the same place as that already covered by the licence issued to the old company on the 28th January, 1963, that is to say 5 days after the meeting in the Mentri Besar's office and some months before the licence which had been issued to the old company was cancelled. On the 7th August, 1963, the licence to extract guano was issued to the new company of which Che Musa (D.W.3) was still a director, the old company's licence having been cancelled on the 27th May, 1963. Although there is evidence that the new company intends to take part in mining enterprises, in fact the only enterprise in which the new company has at any time been interested is the extraction of guano from the caves at Kota Gelanggi.

The third thing to note is that by June, 1962, it must have been apparent to anyone who knew anything about the business, that the extraction of guano from Kota Gelanggi was a business which three business men, Messrs. Warren, Corkett and Hughes thought was one in which it was worthwhile to invest $50,000. Whatever the ultimate result may have been it is obvious that high hopes were held at that time

of the development of an extremely profitable enterprise.

The fourth thing to note is that between the end of May and the middle of October, 1962, the 2nd defendant was not short of money as during that time Mr. Warren gave him a total of $19,000 for his own use. This was in addition to the money which Mr. Warren advanced for the use of the old company.

Now to deal with the first four points at issue individually.

On the 14th August, 1962, what purported to be a resolution by the old company dated the 10th August, 1962, stating that it was resolved that the old company should open a bank account with the Bank of America, Kuala Lumpur, and that cheques drawn on such account should be signed by the 2nd defendant and Che Rahmah (D.W.5) was forwarded to the Bank of America, Kuala Lumpur, for the purpose of opening an account in the name of the old company. The 10th August, 1962, was the date of the meeting which the 2nd defendant had with the plaintiff at which the plaintiff telephoned the Mentri Besar, Pahang, (D.W.2). That is the meeting referred to in the letter dated the 21st August, 1962, written by the Mentri Besar (D.W.2) to the plaintiff (page 3 of bundle "A") setting out the position as to the grant of the licence. That is the meeting at which the 2nd defendant said that the plaintiff asked that Che Rahmah (D.W.5) should be a co-signatory of the old company's cheques so that there would be some check on the old company's financial activities. The explanation of Che Rahmah (D.W.5) as to how she came to be a co-signatory of the cheques is that she was persuaded to do so by the 2nd defendant and Che Sabri (P.W.10) because, the 2nd defendant's personal account at that bank having on a previous occasion been closed owing to lack of funds, the bank had refused to open an account with the old company unless there was another signatory in addition to the 2nd defendant. Che Rahmah (D.W.5) said that she had agreed to sign these cheques in order to assist her relative, the 2nd defendant. This explanation by Che Rahmah (D.W.5) was confirmed by Che Sabri (P.W.10).

In the first instance if the 2nd defendant had had trouble with the Bank of America on a previous occasion of such gravity that they were reluctant to open an account in the name of the old company because he was a director, it seems to me likely that the simple course would have been taken to open the old company's account at some other bank.

Che Rahmah (D.W.5) said that all that she did was to sign a yellow card which was probably a specimen signature form, that she never went to the Bank of America, that she knew no one in the Bank of America and as far as she was aware she was unknown to the bank. She agreed that the name Che Rahmah would mean nothing by itself to the Bank of America. It is apparent, therefore, that Che Rahmah's (D.W.5) signature on the cheques would have had no more significance to the Bank of America than the signature of the 2nd defendant's wife or daughter, and accordingly there was no need to persuade her to become a co-signatory when she at first refused.

At the time Che Rahmah (D.W.5) did not have a bank account of her own. She said that she did not inform her husband that she had agreed to sign cheques as a co-signatory in the old company. If the story had been as told by Che Rahmah (D.W.5) I do not think that she would have failed to tell the plaintiff about it at the time. In my opinion Che Rahmah's (D.W.5) explanation of why she became a co-signatory of the old company's cheques is untrue.

All that can be said about the second point at issue is that the date on which the meeting is alleged to have taken place at the plaintiff's house was the 15th October, 1962, and that was very shortly after the temporary occupation licence and the licence to extract guano had been issued, and all fees and deposits had been paid, and everything was ready for the undertaking to go ahead. It was therefore an appropriate moment to press for the employment of those persons on the staff of the old company.

On the third point at issue, the meeting at Inche Osman's house in Kuala Lumpur in October/November, 1962, was explained by Che Ishak (P.W.6) as being a direct consequence of the visit to Kota Bharu of the 2nd defendant and Che Sabri (P.W.10). Che Sabri (P.W.10) stated that they went to see Che Ishak (P.W.6) at Kota Bharu because they thought it would be easier to go to a Malay lawyer. On the face of it it would appear to be an extraordinary thing to do to go hundreds of miles to Kota Bharu to consult a Malay lawyer. In any event there is probably at least one Malay lawyer in Kuala Lumpur.

But quite apart from that Messrs. Allen & Gledhill had, apparently to the complete satisfaction of the 2nd defendant, already prepared the memorandum and articles of association of the old company, obtained the registration of the old company and had drawn up the agreement of the 30th May, 1962. In addition to that it was specifically provided in clause 5 of that agreement that the further agreement which was to follow on the grant of the 15 year lease was to be prepared by Messrs. Allen & Gledhill. Why therefore did they go all the way to Kota Bharu to consult Che Ishak (P.W.6)

instead of going to consult Messrs. Allen & Gledhill in Kuala Lumpur?

However they did go to Kota Bharu and a draft agreement was prepared and apparently the 2nd defendant took it away with him. Not the least surprising thing about this point is the fact that the 2nd defendant was never asked about this visit to Kota Bharu either in examination-in-chief or in cross-examination.

We know that Che Ishak (P.W.6) was the lawyer who had been entrusted by Che Musa (D.W.3) with the formation of the new company which was ultimately registered on the 12th December, 1962, although instructions for its formation had been, according to Che Musa (D.W.3), given many months before. The suggestion by the defendants is that the reason for the visit to Che Ishak (P.W.6) at Kota Bharu is that Che Ishak (P.W.6) was Che Musa's (D.W.3) lawyer and also one of the plaintiff's advisers.

As I have already said Che Ishak (P.W.6) stated that it was only at Inche Osman's house in Kuala Lumpur that he learned that Messrs. Allen & Gledhill were the solicitors for the old company. He said that he did not know what work Messrs. Allen & Gledhill had done before for the old company and he stated that the 2nd defendant had not told him that they had previously prepared an agreement in connection with another transaction. He added that when it came out that the old company already had solicitors he told the 2nd defendant that he could not act any more. In the draft agreement which was prepared by Che Ishak (P.W.6) at Kota Bharu the seventh recital refers to the agreement to enter into this agreement (that is the agreement which he was drafting) pursuant to clause 5 of the agreement of the 30th May, 1962. He must inevitably have read clause 5 of that agreement and as I have already said clause 5 provides that the agreement to be drawn up in pursuance of that clause is to be drawn up by Messrs. Allen & Gledhill. In addition the agreement of the 30th May, 1962, has Messrs. Allen & Gledhill's name on the back page. How in those circumstances could he honestly pretend such ignorance of Messrs. Allen & Gledhill's participation in this matter?

When he was giving evidence the plaintiff was asked if he had ever employed Che Ishak (P.W.6) as a solicitor and this he denied. He denied it several times. When Che Ishak (P.W.6) was giving evidence he was asked if he had ever acted as solicitor for the plaintiff and he too denied it. Che Ishak (P.W.6) has been in practice as an advocate and solicitor since 1961, having done his reading in chambers in Kuala Lumpur with Messrs. Shearn, Delamore & Co., and at the operative time in 1962 he was in practice on his own in Kota Bharu. In this connection Messrs. Shearn, Delamore & Co. of which firm Mr. Rintoul is, I think, the senior partner, wrote a letter dated the 11th August, 1964, (P.26) to the 1st defendant stating that at one stage it had been proposed that Che Ishak (P.W.6) should be counsel in this case for the plaintiff but that he would not act as counsel in the case if the 1st defendant wished to *subpoena* him as a witness. In cross-examination Che Ishak (P.W.6) admitted that he had arrived in Kuala Lumpur two or three days before the meeting at the Chinese Assembly Hall at the request of Mr. Rintoul, counsel for the plaintiff, and that he was retained to act with Mr. Rintoul on behalf of the plaintiff. I am sure that a firm of advocates and solicitors of the standing of Messrs. Shearn, Delamore & Co. with a number of partners, and I have no doubt a number of assistant solicitors, would not call in a solicitor of as little experience as Che Ishak (P.W.6) to assist in a case of this magnitude without the specific instructions of their client. It may be that a distinction is being drawn between acting as a solicitor and acting as counsel. In my opinion there can be no such distinction where, as in this country, there is a combined Bar. In my opinion both the plaintiff and Che Ishak (P.W.6) knew perfectly well what was meant when they were asked that question and their answers were deliberately untrue.

As regards the fourth point at issue I do not think that there is any doubt that, as I have already said, it was after the meeting in Inche Osman's house in Kuala Lumpur that relations between the parties finally reached breaking point and in my opinion this probably was, as Che Rahmah (D.W.5) said, in November, some little time prior to Che Rahmah (D.W.5) writing to the Bank of America saying that she would no longer be a co-signatory to the old company's cheques. At any rate the last cheque of the old company signed by Che Rahmah (D.W.5) was debited to the old company's account at the Bank of America, Kuala Lumpur, on the 9th November, 1962.

Che Rahmah (D.W.5) was vague as to why relations were finally broken off but she thought it might have resulted from the 2nd defendant asking her to sign a blank cheque. She said that it was only then that she told the plaintiff that she was acting as a co-signatory of the old company's cheques and that the plaintiff was very angry and then and there drafted and typed the letter which she signed to the Bank of America dated the 26th November, 1962.

The plaintiff said he was displeased because the 2nd defendant had tricked Che Rahmah

(D.W.5) into signing cheques. Even if Che Rahmah's (D.W.5) version of how she came to be a co-signatory of the old company's cheques was the correct one and if that was what she told the plaintiff, I do not see how it could be said that the 2nd defendant tricked Che Rahmah (D.W.5) into becoming a co-signatory. The plaintiff might in such circumstances have been cross because Che Rahmah (D.W.5) agreed to become a co-signatory without telling him, but she was not tricked. And anyway if those were the circumstances what harm had been done? But as I have already said I do not believe Che Rahmah's (D.W.5) version of how she came to be a co-signatory of the old company's cheques.

The 2nd defendant was never cross-examined on the question of having asked Che Rahmah (D.W.5) to sign a blank cheque and I find it very difficult to believe that such an omission would have taken place had it in fact been the root cause of the break-up in relations between the parties when the defendants are alleging that the break-up occurred for a very different reason.

The 2nd defendant had never had the slightest difficulty in getting Che Rahmah (D.W.5) to sign cheques. She herself said she would sign any cheque presented to her by the 2nd defendant for her signature provided it was filled in. What could be the 2nd defendant's object in asking her to sign a blank cheque in such circumstances?

In my opinion there never was a blank cheque incident.

As I have said Che Sabri (P.W.10) in his evidence supported the plaintiff's version of the meeting in July, 1962, Che Rahmah's (D.W.5) version of how she came to be a co-signatory of the old company's cheques and Che Ishak's (P.W.6) version of the meeting in Inche Osman's house in Kuala Lumpur. Now Che Sabri (P.W.10) struck me in the witness box not as a witness who was telling the truth, the whole truth and nothing but the truth, but as a witness who was not altogether clear what it was he was expected to say. He said that one day he and the 2nd defendant went to the Bank of America to open an account with the bank. He stated that the Bank of America refused to allow the opening of the account but he did not appear to know why. He said it was because the 2nd defendant had a personal account with that bank but he did not know whether the 2nd defendant had an account with the bank at that time or at some previous time and he did not know why that fact should have caused the bank to refuse to open an account in the name of the old company. In cross-examination he explained that he did not know personally what the bank had said because when he went there with the 2nd defendant he waited outside and what he knew about what the bank said was what the 2nd defendant had told him. Che Sabri's (P.W.10) evidence as to this was very unimpressive and I think it most unlikely that a director of a company who wished to open an account with the bank would go to the bank for that purpose and then wait outside. The impression I gained from seeing and hearing Che Sabri (P.W.10) giving evidence in the witness box on this point was that he was not telling the truth.

It is alleged by the 2nd defendant that the reason why Che Sabri (P.W.10) resigned his directorship is that he was persuaded to do so by Che Musa (D.W.3) because the 2nd defendant had refused to accede to any of the plaintiff's demands. When asked why he had resigned his directorship of the old company Che Sabri (P.W.10) said that there were three reasons. The first reason was that he did not agree with the 2nd defendant in the manner in which he, the 2nd defendant, carried on the business. The second reason was that on several occasions he asked the 2nd defendant to hold meetings of the old company, ordinary meetings and general meetings, and that request was never met. And the third reason was that the 2nd defendant did something which he, Che Sabri (P.W.10) thought was extraordinary. He said that the 2nd defendant sent a telegram to him on the 2nd March, 1962, telling him that the 2nd defendant was dead.

It may well be that Che Sabri (P.W.10) did not agree with the 2nd defendant in the manner in which the business was being carried on, although the running of the business had been, at least nominally, transferred to Messrs. Warren, Corkett and Hughes by the agreement of the 30th May, 1962. It is not clear as to what precisely it was that he was objecting to because he did not say.

When asked what meeting of the old company it was that he had requested the 2nd defendant to hold and for what purpose he was unable to say.

The third reason referred to the telegram which was sent to Che Sabri (P.W.10) at Telok Anson, Perak, where he lived, by Inche Abdul Aziz bin Haji Salleh (P.W.11) on the 2nd March, 1962, (P.29) which stated that the 2nd defendant was dead. The 2nd defendant explained this by saying that what he had intended Inche Abdul Aziz (P.W.11) to say in the telegram was that the business was dead, and the purpose was to get Che Sabri (P.W.10) to come to Kuala Lumpur. It appeared that at about that time the capital of the old company had

been exhausted and no funds were available. It is difficult to see how a telegram sent on the 2nd March, 1962, could possibly be a ground for Che Sabri (P.W.10) resigning as a director of the old company on the 23rd November, 1962, when Che Sabri (P.W.10) had himself taken part in the events which took place in July, August, October and November, 1962, to which I have referred above. The only conclusion that I can reach from these reasons put forward by Che Sabri (P.W.10) is that he was not telling the truth.

I am therefore unable to accept Che Sabri (P.W.10) as a witness of truth.

Che Rahmah (D.W.5) was quite prepared to sign the cheque (P.18) for $527 and the cheque (P.19) for $664 on the old company's account knowing that they were for the payment of expenses of the marriage between the 2nd defendant's daughter and the plaintiff's youngest brother. Her explanation was that it was the 2nd defendant's responsibility to see that the old company's funds were used for proper purposes in the course of the old company's business. I formed the view from seeing and hearing Che Rahmah (D.W.5) in the witness box that she is a highly intelligent woman who would know perfectly well that it was wholly irregular to use the old company's funds for this purpose.

It is argued that if, as the 2nd defendant alleges, Che Rahmah (D.W.5) became a co-signatory of the old company's cheques in order to be in a position to keep a check on the old company's financial activities, then she was very incompetent at her job. This may well be so, but it must be remembered that the money which was being spent while she was a co-signatory was capital put up by Mr. Warren and not income earned as a result of the extraction of guano. Had the only funds available to the old company been income to be divided up amongst the shareholders she might have kept a tighter control of expenditure than was the case with this capital, which was not going to be divided between the shareholders but was there, if I may so put it, to be spent.

I have already said I am unable to accept Che Rahmah's (D.W.5) explanation of why she became a co-signatory of the old company's cheques. I have also stated that in my opinion there never was any question of Che Rahmah (D.W.5) signing a blank cheque. I am, therefore, unable to accept her as a witness of truth.

Che Ishak (P.W.6) was at the meeting at the Chinese Assembly Hall with the plaintiff and his counsel Mr. Rintoul. Obviously neither of the defendants knew Che Ishak (P.W.6) was going to be there. Clearly neither the plaintiff nor Che Ishak (P.W.6) knew of the existence of the 2nd defendant's statement nor of the fact that Che Ishak's (P.W.6) name appeared in it. But did they anticipate some reference to Che Ishak (P.W.6)? And if so, in what connection? I find it difficult to believe that Che Ishak's (P.W.6) presence at the Chinese Assembly Hall and the mention of his name in the 2nd defendant's statement is pure coincidence.

I am unable to accept Che Ishak's (P.W.6) evidence as to his lack of knowledge of Messrs. Allen & Gledhill's participation in this matter. Admittedly the agreement of the 30th May, 1962, was made between the 2nd defendant of the one part and Messrs. Warren, Corkett and Hughes of the other part, but he was aware that the old company had taken the place of the 2nd defendant and the Malayan Phosphate Company Limited had taken the place of Messrs. Warren, Corkett and Hughes for the purposes of that agreement and he must have been aware that under the terms of that agreement the intention was expressed in clause 5 that the fresh agreement should be prepared by Messrs. Allen & Gledhill.

Che Ishak (P.W.6) denied that he had ever acted as solicitor for the plaintiff. When he was asked the question there was no doubt what the question meant. It meant that as he stood there in the witness box on the 21st October, 1964, had he at any time prior to that moment acted as solicitor for the plaintiff. He denied it. He had acted as solicitor for the plaintiff and his answer was deliberately untrue.

In addition at the close of his cross-examination by the 1st defendant, when he was being pressed as to the part he played at the meeting in Inche Osman's house in Kuala Lumpur, he gave a wholly unconvincing display of temper when he threatened to take court action against the 1st and 2nd defendants. When asked by the 1st defendant what action he intended to take he stated that he was in the process of making up his mind. This was on the 21st October, 1964, more than a year after the meeting at the Chinese Assembly Hall, and if a solicitor is genuinely of the opinion that he has been wronged I do not think it will take him over a year to make up his mind, one way or the other, whether it is a matter which is worth taking to court.

I am therefore unable to accept Che Ishak (P.W.6) as a witness of truth.

Now what of Che Musa (D.W.3)? Che Musa (D.W.3) stated that the reason why he accompanied the 2nd defendant and Che Sabri (P.W.10) to see the Mentri Besar (D.W.2) at the end of 1961 or the beginning of 1962 was in order for him to introduce the 2nd defendant

to the Mentri Besar (D.W.2). The Mentri Besar (D.W.2) in his evidence stated that there was no need for an introduction as he already knew the 2nd defendant. Che Musa (D.W.3) eventually compromised by saying that it may have been, as they went to see the Mentri Besar (D.W.2) at his house in the evening, to ensure that the Mentri Besar (D.W.2) did see them, Che Musa (D.W.3) being an old friend of the Mentri Besar (D.W.2). At any rate Che Musa (D.W.3) was at pains to make it appear that he did not go because he was interested in the extraction of guano as a business proposition.

Che Musa (D.W.3) was present at the plaintiff's house on the 30th September, 1962, when the wedding of the 2nd defendant's daughter and the plaintiff's youngest brother took place. He also admitted that there had been occasions when he, Che Ishak (P.W.6) and Inche Abdul Rani, one of the directors of the new company, were at the plaintiff's house together.

Che Musa (D.W.3) was asked early on in examination-in-chief whether he knew that the old company had held a licence to extract guano from Kota Gelanggi. His reply was that perhaps the old company was formerly licensed to do business there. As he subsequently admitted that he knew very well that the old company had held such a licence why was it necessary to be so evasive at first?

He said that his intention with regard to the new company was to form a company to deal with many branches of business, but mainly to concentrate on the business of mining. While discussions were going on as to the formation of the new company nobody had any idea to take part in the extraction of guano. Only later on when they heard about the guano business did they become interested. Che Musa (D.W.3) himself at least knew all about the guano business at Kota Gelanggi at the end of 1961 or the beginning of 1962.

He stated that at the time of the hearing the new company was then doing mining work, tin mining at Rompin, Pahang, and was also interested in mining in other places. They were also extracting guano from Kota Gelanggi. The impression he gave was that the extraction of guano was of secondary importance. He stated that the mining rights at Rompin, Pahang, were then in the name of the new company.

It would appear that when the new company was formed Dato Mahmud, one of the directors, had a prospecting licence in respect of land at the 42nd milestone, Kuantan/Jerantut Road and Inche Abdul Rani, another director, had a prospecting licence in respect of 950 acres of land, the whereabouts of which were not stated, while Che Musa (D.W.3) had a concession at Rompin in respect of 1,900 acres. On being pressed in cross-examination Che Musa (D.W.3) admitted that the mining rights in the land at Rompin were still in his own name. Che Musa (D.W.3) ultimately admitted that, although the new company was formed in order to develop these lands, at the time of the hearing, 2½ years later, the new company had made no application for prospecting or mining licences in respect of any area, had spent no money on mining in any way and was doing nothing then and had never done anything in connection with any mining enterprise. The only activity that the new company had ever been engaged in was the extraction of guano at Kota Gelanggi.

Che Musa (D.W.3) stated that at the meeting in the Mentri Besar's office on the 23rd January, 1963, he knew that the old company held a licence to extract guano at Kota Gelanggi and that between that date and the 28th January, 1963, he had no information that the old company's licence had been or was going to be cancelled and yet nevertheless he put in an application for a licence in respect of the same area in the name of the new company. Che Musa (D.W.3) had no satisfactory explanation as to why he should do this.

Che Musa (D.W.3) stated that at the meeting in the Mentri Besar's office on the 23rd January, 1963, he knew that the 2nd defendant wished to make a complaint about Che Musa's (D.W.3) daughter, the plaintiff's wife, Che Rahmah (D.W.5), but he did not say what the complaint was about. Whether he knew what the complaint was we were not told. Perhaps he did and knowing it was well-founded did not wish to say. At any rate he did not assist the 2nd defendant to air his grievances before the Mentri Besar (D.W.2) by leaving the room when the 2nd defendant asked him to.

Why give a reason for accompanying the 2nd defendant and Che Sabri (P.W.10) to see the Mentri Besar (D.W.2) which was untrue? Why be so evasive about his knowledge that the old company had held a licence to extract guano from Kota Gelanggi? Why try and mislead the court as to the activities of the new company? Why apply for a licence to extract guano over an area in respect of which the old company already held a licence?

Che Musa (D.W.3) can only be classified, at best, as a devious and evasive witness.

It will be remembered that as a result of the plaintiff's telephone call to the Mentri Besar, Pahang, (D.W.2) on the 10th August, 1962, the Mentri Besar (D.W.2) wrote a letter to the plaintiff on the 21st August, 1962, reporting to

him the result of his inquiries. The original of this letter was in the possession of the 2nd defendant. The 2nd defendant said that the plaintiff had given it to him. This was denied by the plaintiff. The original of this letter (D.10) has a note written in ink on it addressed to the plaintiff's personal assistant by the plaintiff's Assistant Minister simply stating "For Hon. Minister". It was explained that in the ordinary course of events this letter would be opened by the Assistant Minister and passed to the plaintiff's personal assistant. If the plaintiff was in Kuala Lumpur at the time the personal assistant would have put the letter into the plaintiff's "In" tray in his office in the ordinary way. If the plaintiff was out of Kuala Lumpur at the time the personal assistant would have put the letter in a loose cover together with other correspondence of a similar nature and sent it to his house where it would be put in the room in his house which he uses as an office. The only way that that letter could have got into the possession of the 2nd defendant would be either by the plaintiff giving it to him or by the 2nd defendant going into the plaintiff's office in his house and extracting the letter from the loose cover. As the 2nd defendant would have had no means whatever of knowing that the letter had been received, it is only remotely possible that the latter explanation is the correct one. The much more probable and to my mind the only acceptable explanation is that the 2nd defendant's statement that the plaintiff gave him the letter is true.

As I have already said in my opinion the plaintiff's statement that he had never employed Che Ishak (P.W.6) as a solicitor was deliberately untrue. I have also stated that in my opinion there never was a blank cheque incident and accordingly the plaintiff was not telling the truth about that either.

I am therefore unable to accept the plaintiff as a witness of truth.

As I have reached the conclusion that the plaintiff, Che Rahmah (D.W.5), Che Ishak (P.W.6) and Che Sabri (P.W.10) are not witnesses of truth and Che Musa (D.W.3) is not much better it is now possible to decide the probabilities on the first four points in issue.

With regard to the first point at issue I have found that Che Rahmah's (D.W.5) and Che Sabri's (P.W.10) explanation of why Che Rahmah (D.W.5) became a co-signatory of the old company's cheques is untrue. Why was it necessary for them to give an untruthful explanation? The answer can only be I think because the 2nd defendant's story that it was agreed that Che Rahmah (D.W.5) should be a co-signatory of the old company's cheques so that there would be some check on the old company's financial activities is true. Such a check would only be necessary if the plaintiff had a share in the business. I find as a fact therefore that the 2nd defendant's statement as to what took place at the meeting in July and on the 10th August, 1962, is true, and he did offer to the plaintiff. and the plaintiff did agree to accept, a 25% interest in the old company.

With regard to the third point at issue why did the 2nd defendant and Che Sabri (P.W.10) go all the way to Kota Bharu to consult Che Ishak (P.W.6) instead of going to consult Messrs. Allen & Gledhill in Kuala Lumpur? Why did Che Ishak (P.W.6) pretend such ignorance of Messrs. Allen & Gledhill's participation in the affairs of the old company? Why did Che Ishak (P.W.6) deny that he had ever acted as a solicitor for the plaintiff? It seems to me that Che Ishak's (P.W.6) evidence was aimed throughout at endeavouring to show that there was no connection whatever between the plaintiff and himself. It may well be that this is the reason why the 2nd defendant was not cross-examined about the visit to Kota Bharu. The reason for his making the untruthful statements that he did could only have been in pursuance of this endeavour and could only have been necessary if in fact he was close to the plaintiff and the 2nd defendant's allegations as to the part Che Ishak (P.W.6) played at the meeting at Inche Osman's house in Kuala Lumpur are true. I have rejected the evidence of Che Ishak (P.W.6) and Che Sabri (P.W.10) as to the meeting at Inche Osman's house in Kuala Lumpur. I find as a fact that the 2nd defendant's story of the demands made by Che Ishak (P.W.6) on behalf of the plaintiff at that meeting is true.

Going back to the second point at issue it seems to me that what is alleged by the 2nd defendant fits into the pattern of events which occurred at that time and in my opinion on the balance of probabilities the meeting between the 2nd defendant and the plaintiff did take place on the 15th October, 1962, and that what occurred at that meeting is what was stated by the 2nd defendant, and I so find.

With regard to the fourth point at issue why was it necessary for Che Rahmah (D.W.5) and the plaintiff to tell an untrue story as to the reason for the breakdown in relations between the plaintiff and the 2nd defendant? As I have already said in my opinion there never was a blank cheque incident. The only conclusion which I can reach as a result is that the breakdown in relations between the plaintiff and the 2nd defendant took place for the reason stated by the 2nd defendant. I find as a fact

therefore that the breakdown in relations between the plaintiff and the 2nd defendant occurred because the 2nd defandant refused to comply with the demands made by, or on behalf of, the plaintiff at the meeting at the plaintiff's house on the 15th October, 1962, and at the meeting at Inche Osman's house in November, 1962.

The view I take as to the first four points in issue is I think reinforced by events which happened subsequent to the breakdown in relations between the plaintiff and the 2nd defendant.

Was it a coincidence that sometime after the 26th November, 1962, Che Rahmah (D.W.5) told the Mentri Besar (D.W.2) that the 2nd defendant had demanded money from Mr. Warren to be given to the Mentri Besar (D.W.2) and to Pahang U.M.N.O.? Was it a coincidence that on the 4th December, 1962, 8 days after the 26th November, 1962, the date upon which the letter signed by Che Rahmah (D.W.5) addressed to the Bank of America informing them that she would no longer be a signatory to cheques drawn on the account of the old company was sent, Che Sabri (P.W.10) wrote to the Registrar of Companies informing him that he, Che Sabri (P.W.10) had resigned as a director of the old company? Why write to the Registrar of Companies? Was it a coincidence that 8 days after that, on the 12th December, 1962, the new company was registered by Che Ishak (P.W.6) on behalf of Che Musa (D.W.3), the plaintiff's father-in-law? Was it a coincidence that 16 days later, on the 28th December, 1962, the old company found it necessary to give written notice to the Malayan Phosphate Company Limited to carry out the terms and conditions of the agreement of the 30th May, 1962? Was it a coincidence that within the next 10 days the Malayan Phosphate Company Limited refused to enter into the new agreement? Was it a coincidence that about this time the temporary occupation licence fee in respect of the year 1963, due on or before the 1st January, 1963, was refused by the Collector of Land Revenue, Jerantut, probably before the Assistant District Officer's report dated the 12th January, 1963, (D.25) was made? Was it a coincidence that on the 3rd January, 1963, before the Assistant District Officer's report dated the 12th January, 1963, (D.25) was made, the Mentri Besar, Pahang, (D.W.2) wrote a letter to the 2nd defendant (page 19 of bundle "A") asking him to call at the Mentri Besar's office on the 23rd January, 1963, a copy of which letter was sent to the plaintiff and to Che Musa (D.W.3)? Was it a coincidence that at the meeting in the Mentri Besar's (D.W.2) office on the 23rd January, 1963, the 2nd defendant wished to make a complaint about the plaintiff and Che Rahmah (D.W.5)? Was it a coincidence that Che Musa (D.W.3) was present at that meeting? Was it a coincidence that Che Musa (D.W.3) on the 28th January, 1963, 5 days after the meeting in the Mentri Besar's (D.W.2) office, applied in the name of the new company for a licence to extract guano over the area in respect of which the old company held a licence to extract guano which was then still in existence to the knowledge of Che Musa (D.W.3)? Was it a coincidence that copies of the letter dated the 16th February, 1963, sent by the Mentri Besar (D.W.2) to the 2nd defendant (page 21 of bundle "A") referring to the letter of the 3rd January, 1963, and reporting the meeting on the 23rd January, 1963, were sent to the plaintiff and to Che Musa (D.W.3)? Was it a coincidence that the old company's licence to extract guano was withdrawn on the 27th May, 1963? Was it a coincidence that a licence to extract guano was ganted on the 7th August, 1963, to the new company, of which Che Musa (D.W.3) was still a director, over the area covered by the old company's licence prior to its withdrawal on the 27th May, 1963?

I think that probably what happened after the breakdown in relations is that, as the plaintiff's demands had been refused, steps were taken to endeavour to obtain the cancellation of the old company's licence to extract guano. To this end I think it probable that Che Rahmah (D.W.5) told the Mentri Besar, Pahang (D.W.2) that the 2nd defendant had demanded money from Mr. Warren to be given to the Mentri Besar (D.W.2) and to Pahang U.M.N.O. in order to prejudice the Mentri Besar (D.W.2) against the 2nd defendant. It was stated in evidence that both Mr. Warren and Mr. Corkett were present when this demand was made. Mr. Warren was subpoenaed by the 1st defendant but was in England at the date of the hearing and was stated to be unavailable. Mr. Corkett on the other hand was stated from the Bar to have been present in court during part of the hearing. Why was he not called by the plaintiff to substantiate Che Rahmah's (D.W.5) statement? As Mr. Corkett was not called I must presume that his evidence would be unfavourable to the plaintiff and would not support the evidence of Che Rahmah (D.W.5) in this connection.

But as a result of being told this it could be expected that the Mentri Besar, Pahang, (D.W.2) would be highly incensed at the suggestion inherent in Che Rahmah's (D.W.5) story that the 2nd defendant was saying that the Mentri Besar (D.W.2) would be prepared to accept money from him. I think it likely also that at about that time it was discovered that the 2nd defendant and the old company had, if

I may so put it, delivered themselves into the hands of the enemy in that certain breaches of the licence for the extraction of guano had been committed. Whether by the 2nd defendant or the Malayan Phosphate Company Limited it is not possible to say. Tuan Haji Osman (P.W.5) stated that the breach complained of was that the particulars of the registration numbers of the vehicles used to remove the guano had not been given to the Collector of Land Revenue, Jerantut. The letter from the State Information Officer, Pahang, in the *Utusan Zaman* of the 1st August, 1963, suggested that there were two further breaches of conditions, one being that another company, presumably the Malayan Phosphate Company Limited, had been permitted to remove the guano and the other being that the old company had failed to pay the appropriate royalty. There is no evidence as to what part, if any, the Malayan Phosphate Company Limited had taken in extracting guano. As regards payment of royalty one wonders what has happened to the deposit of $6,300.

This all led to the meeting in the Mentri Besar's (D.W.2) office on the 23rd January, 1963, and his attitude at that meeting is much more understandable if, as I suggest, he had been misled by Che Rahmah (D.W.5) as to the money for himself and Pahang U.M.N.O. and at the same time was aware that there had been breaches of the conditions of the licence to extract guano.

Be that as it may, all these things do in my opinion point to the 2nd defendant's allegations being substantially true.

That leaves the last three points at issue and I think they can be dealt with quite shortly. The only evidence of the payment of $1,000 in cash to Che Rahmah (D.W.5) by the 2nd defendant in July, 1962, was that of the 2nd defendant. The only evidence of the payment of $3,000 in cash to the plaintiff in August and September, 1962, by the 2nd defendant was that of the 2nd defendant. As I have already said I am not prepared to accept the bare evidence of the 2nd defendant without some semblance of corroboration. There is none in respect of these payments of cash and I am not prepared to find that these payments were made.

With regard to cash cheque No. 82876 dated the 12th September, 1962, for $500 and cash cheque No. 82883 dated the 25th September, 1962, for $500 which the 2nd defendant alleged he gave to Che Rahmah (D.W.5) for her own use both these cheques are endorsed by Inche Abdul Hamid bin Abu Bakar (P.W.12). Che Hamid (P.W.12) stated that he endorsed these cheques and cashed them at the bank and handed the proceeds to the 2nd defendant, who was at that time living at the plaintiff's house in Kia Peng Road and sharing a room with him. Che Hamid (P.W.12) lived with his mother in the plaintiff's house. His mother was paid $50 per month salary and her food was supplied. Che Hamid (P.W.12) said that he was not a servant of the plaintiff and was not in receipt of any salary. He did however receive board and lodging from the plaintiff. He worked for the plaintiff of his own free will for nothing. He had a driving licence and used to drive the plaintiff's car. He used to take the plaintiff's children to and from school. He used to go to the market and do marketing, but he considered himself as not being employed by the plaintiff and stated that he was quite happy to be unemployed. Che Hamid (P.W.12) was aged 31 and had been living with the plaintiff since 1951. Che Hamid (P.W.12) was clearly, even if not an employee of the plaintiff, wholly dependent upon him.

Although many cheques were signed by Che Rahmah (D.W.5) during the time when the 2nd defendant was staying at the plaintiff's house and although many of these cheques were cashed by a variety of different people including the 2nd defendant's wife the only two cheques which were cashed by Che Hamid (P.W.12) were these two cheques which the 2nd defendant said he had given Che Rahmah (D.W.5) for her own use.

Che Rahmah (D.W.5), as I have already said, is not a person who was over particular as to the uses to which the old company's funds were put.

On the balance of probabilities after seeing and hearing Che Hamid (P.W.12) in the witness box I am of the opinion that when he cashed these cheques he handed the cash to Che Rahmah (D.W.5) for her own use.

It is pleaded by the plaintiff in his reply that the words spoken by the 1st defendant at the meeting at the Chinese Assembly Hall on the 11th September, 1963, the words set out in Appendix "B" of the statement of claim, and the words set out in Appendix "A" of the statement of claim are not comment at all but false assertions of matters of fact. I agree that these words are not comment but are assertions of matters of fact.

The gravamen of the 1st defendant's allegations against the plaintiff in his statement in the House is contained in the words "the matter of corrupt practices indulged in by the present Minister of Health (meaning the plaintiff) in that he received various sums of money and other favours from a company known as the Malay Natural Fertilisers Co. Ltd., Pahang, and that these allegations against the said Minister will be shown by documentary and

other proofs in my (1st defendant's) possession."

In his statement at the meeting in the Chinese Assembly Hall on the 11th September, 1963, the 1st defendant elaborated on this stating that an inquiry would show:—

"(a) That the Minister, Enche Rahman Talib, is guilty of misconduct to the extent that such misconduct renders him, in my opinion, unfit to be a Minister of the Government,

(b) That he has been guilty of nepotism, and

(c) That by reason of such misconduct he is unfit to hold public office as he has, in my opinion, shaken public confidence in the fair and impartial administration of public affairs."

"Corrupt practices" is defined in the *Oxford Dictionary* as "the perversion of integrity by bribery or favour".

The evidence and the words contained in Appendix "A" to the statement of claim show that it would have been more strictly accurate to say that the "various sums of money and other favours" came from the 2nd defendant. In my opinion however the position is not affected by this because, although in law the 2nd defendant and the old company were separate entities, the 2nd defendant was the chief and substantially the only executive officer of the old company and in fact was for all practical purposes the old company.

The most important of the "documentary and other proofs" in the 1st defendant's possession was of course the 2nd defendant's statement which is contained in Appendix "A" to the statement of claim and, as I have already said, it is admitted by both the plaintiff and the 1st and 2nd defendants that in order to justify the onus on the 1st and 2nd defendants is to establish substantially the truth of the words contained therein.

In my opinion the defendants have succeeded in justifying by proving the truth of substantially the whole of the words of the statement attached to the statement of claim as Appendix "A", with the exception of paragraph 18 relating to the payment of cash to the plaintiff.

There were two distinct charges against the plaintiff, one being the receipt of the two sums of money and the other being the receipt of favours. As I have already found he did receive favours but I am unable to find that he did receive sums of money. In my opinion although the defendants have failed to prove the truth of the charge that the plaintiff received the two sums of money the words making that allegation do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

In my opinion, therefore, the defendants' defence of justification succeeds.

The plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *Shearn, Delamore & Co.*; *S. Seenivasagam & Sons.*

BERTAM CONSOLIDATED RUBBER CO. LTD. v. DEPUTY COLLECTOR OF LAND REVENUE, BUTTERWORTH

[A.C.J. (Hepworth J., I. W. Hake and Tay Hooi Soo, Assesors) August 22, 1964]

[Penang — Land Acquisition Reference No. 1 of 1964]

Land acquisition — Market value — Conflicting expert opinions — Weight of such evidence — Potential development value of land — Land Acquisition Act, 1960, ss. 37(1), 38 and 51.

This was an objection against the award of the deputy collector of land revenue in respect of the compulsory acquisition by the Government of the State of Penang of approximately 5 acres of land owned by the company. The deputy collector awarded $10,000 for the land acquired i.e. $2,000 per acre. The company claimed a sum in excess of $100,000 as the value of the land. Their two expert witnesses valued the land at $76,000 and $131,000 respectively.

Held: on the facts the approach of the government valuers was more realistic and substantially correct. However since the deputy collector had made no allowance whatsoever for any potential building value, the figure of $2,000 per acre lay unduly low on the range of possible values. In the light of all the evidence given and a careful inspection of the land and the surrounding locality a fair figure would be $3,500 per acre or $17,500 for the whole 5 acres.

Per Hepworth J. "Valuation can never be a strictly mathematical process and, in particular, remote potential development value is often not easy to quantify in the absence of an abundance of evidence culled from recent transactions in respect of comparable property. Rarely is the available evidence overwhelmingly convincing and ultimately it becomes a matter of opinion based upon experience.

Almost invariably there emerges from a consideration of all the facts a fairly well-defined range although sometimes somewhat blurred at either end within which the answer clearly must lie and the opinions of those of equal competance and experience may well tend to indicate different points within that range."

LAND ACQUISITION REFERENCE.

Eusoffe Abdoolcader for the owners.

Wan Sulaiman bin Pawan Teh (Senior Federal Counsel) for the Deputy Collector of Land Revenue.

Cur. Adv. Vult.

Hepworth J.: This was an objection against the award of the deputy collector of land revenue, Butterworth, referred to this court under section 38 of the Land Acquisition Act, 1960, in respect of the compulsory acquisition by the Government of the State of Penang of approximately 5 acres of land owned by the Bertam Consolidated